TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1[illegible]

No. [illegible] 112

F. A. MILLER, PLAINTIFF IN ERROR,

vs.

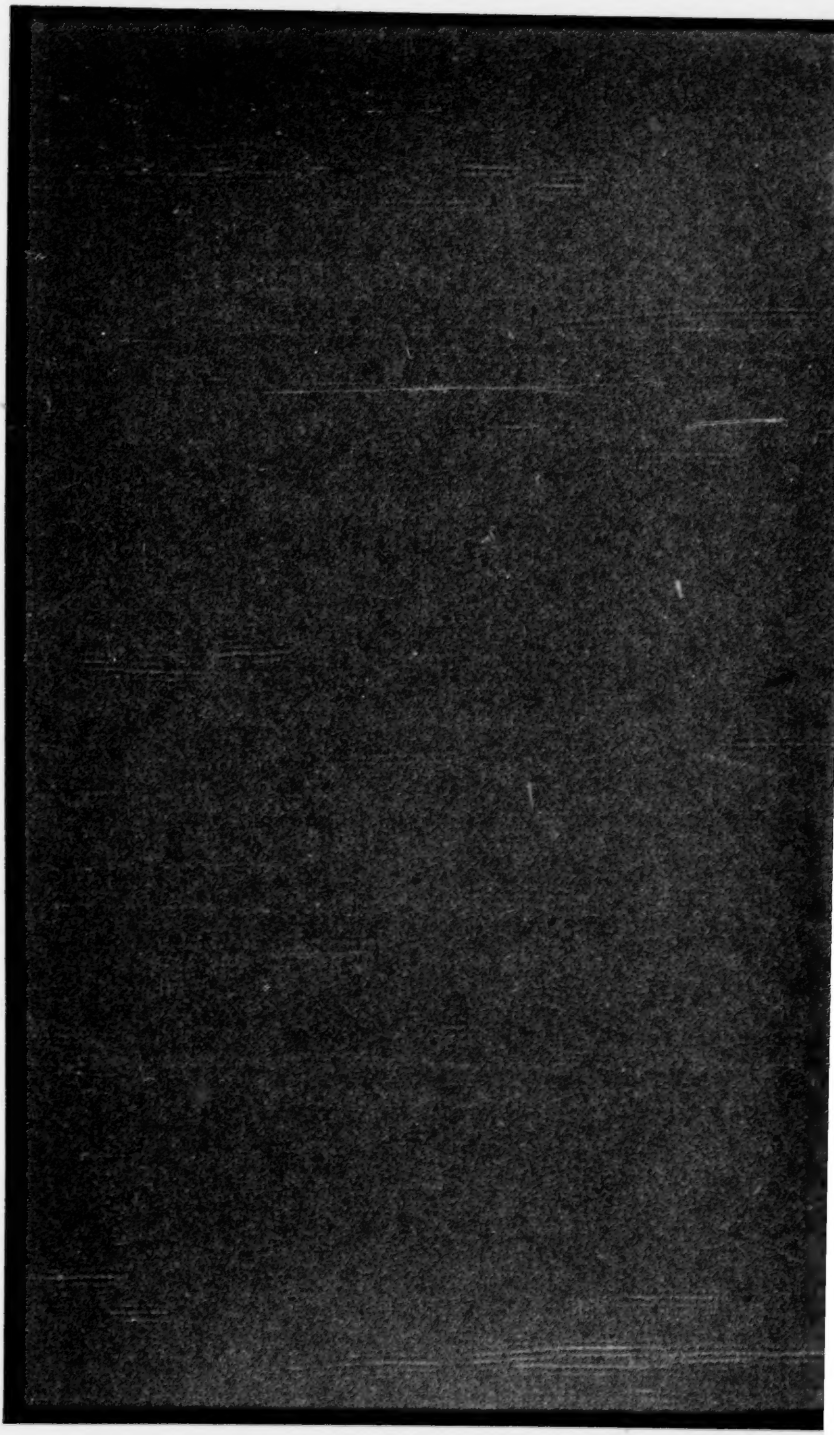
T. F. WILSON, SHERIFF OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MINNESOTA
STATE
LAW

FILED FEBRUARY 10, 1902.

(23,541)



(23,541)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 966.

F. A. MILLER, PLAINTIFF IN ERROR,

vs.

F. P. WILSON, SHERIFF OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

	Original.	Print
Petition for writ of *habeas corpus*	1	1
Complaint	2	1
Chapter 238, Laws of California	5	3
Exhibit A—Complaint	11	7
Warrant of arrest	12	8
Order for writ of *habeas corpus*	16	9
Answer to return of sheriff	17	10
Complaint	18	10
Chapter 238, Laws of California	21	12
Exhibit A—Complaint	27	16
Acknowledgment of service of petition	30	17
Order remanding petitioner	32	18
Return of sheriff	33	18
Warrant of arrest	34	19
Writ of *habeas corpus*	36	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 6, 1913.

	Original.	Print
Order of submission	39	20
Order of final submission	40	21
Opinion	41	21
Certificate of final judgment	49	28
Petition for writ of error	51	29
Assignment of errors	65	38
Order allowing writ of error	70	41
Writ of error	72	41
Citation	75	43
Admission of service of citation	76	43
Bond on writ of error	77	44
Clerk's certificate	80	45

1 In the Supreme Court of the State of California.

In the Matter of the Application of F. A. MILLER for a Writ of Habeas Corpus.

Petition.

To the Supreme Court of the State of California:

The Petition of F. A. Miller for a writ of habeas corpus respectfully shows:

That the said F. A. Miller is unlawfully imprisoned, detained, confined and restrained of his liberty by F. P. Wilson, Sheriff of the County of Riverside, State of California;

That said imprisonment, confinement and restraint are illegal, and that the illegality thereof consists in this, to-wit:

That your petitioner is a male citizen of the United States, over the age of twenty-one years, a resident of the City of Riverside, in said County of Riverside, State of California;

That heretofore, to-wit, on the 25th day of May, 1911, your petitioner, while attending to his duties, occupation and business as proprietor of the Glenwood Hotel, sometimes called Glenwood Mission Inn, at the said City of Riverside, was arrested by said Sheriff of Riverside County, and taken into custody, upon a certain charge against him for committing an alleged misdemeanor set forth in that certain complaint, a copy of which is as follows, to-wit:

2 "In the Justice's Court of Riverside Township, of the County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

Complaint—Criminal.

F. P. Wilson, being duly sworn, on oath, says that the crime of a misdemeanor has been committed, and that the above named defendant F. A. Miller is guilty thereof: Committed as follows:

The said F. A. Miller, in Riverside Township, in the said County of Riverside, State of California, on the 24th day of May, A. D. 1911, being then and there the proprietor of the Glenwood Hotel in the City of Riverside, and the employer of females to work therein, did then and there employ one Emma Hunt, a female person, to work therein as an employé in said hotel, and did then and there unlawfully employ, permit and require said Emma Hunt to work therein during said 24th day of May, 1911, to-wit: for the period of nine hours, contrary to the Statute in such case made and provided,

and against the peace and dignity of the People of the State of California.

F. P. WILSON.

Subscribed and sworn to before me this 25th day of May, A. D. 1911.

HOLTON WEBB,
Justice of the Peace."

Endorsement: "No. —. Docket 9, Page 54. Justice's Court, Township of Riverside, County of Riverside. The People of the State of California against F. A. Miller. Complaint. Filed this 25th day of May, A. D. 1911. Holton Webb, Justice of the Peace."

3 Your petitioner further alleges that on the 25th day of May, in the year 1911, said complaint was made before Holton Webb, Justice of the Peace in Riverside Township, in the County of Riverside, State of California, by said F. P. Wilson, and said complaint was regularly and duly sworn to by said F. P. Wilson as aforesaid, and thereupon, on the said 25th day of May, 1911, said Justice of the Peace of said Riverside Township, Holton Webb, issued a warrant in accordance with law, authorizing and directing the Sheriff of Riverside County, State of California, to arrest the said F. A. Miller for the offence charged in said complaint.

That thereupon, on said date, in pursuance of said warrant and under said complaint, the said F. P. Wilson, as Sheriff of said County of Riverside, State of California, did serve the same and arrest your petitioner; that thereafter, to-wit, on May 26th, 1911, after your petitioner had been duly arraigned on said charge and had pleaded not guilty thereto, your petitioner was duly tried under the laws of the State of California, upon said complaint, before said Holton Webb, a Justice of the Peace of said Riverside Township; and thereupon, to-wit, on said 26th day of May, 1911, your petitioner was duly convicted of said offence charged in said complaint and action;

That such proceedings were thereupon taken, under the laws of the State of California, that an appeal was thereupon perfected, from the decision and judgment of the said Holton Webb, as Justice of the Peace of said Riverside Township, to the Superior Court of Riverside County, State of California.

That thereafter, to-wit, on the 31st day of May, 1911, after due and proper proceedings in accordance with the laws of the State of California, your petitioner was duly tried by said Superior Court of

4 Riverside County, after said appeal, a trial by jury having been duly waived, and judgment was thereupon rendered by said Court, to-wit, on June 10, 1911, duly acquitting your petitioner of the offence charged in said complaint and action, and thereupon your petitioner was duly discharged; that the sole ground on which said judgment of acquittal was made was that the statute (a copy of which is hereinafter inserted), was unconstitutional and void.

That thereafter, to-wit, on the 13th day of June, 1911, your petitioner, while attending to his duties, occupation and business as Proprietor and Manager of the said Glenwood Hotel, sometimes called Glenwood Mission Inn, at the said City of Riverside, was again arrested by said Sheriff of Riverside County and taken into custody, upon a certain charge against him for committing an alleged misdemeanor set forth in that certain complaint, a copy of which is hereto annexed and made a part hereof, being marked "Exhibit A."

Your petitioner further alleges that on the 13th day of June, in the year 1911, said complaint was made before Holton Webb, Justice of the Peace in Riverside Township, in the County of Riverside, State of California, by F. P. Wilson, and said complaint was regularly and duly sworn to by said F. P. Wilson as aforesaid, and thereupon on said 13th day of June, 1911, said Justice of the Peace of said Riverside Township, in said County of Riverside, State of California, issued a warrant in accordance with law, authorizing and directing the Sheriff of Riverside, State of California, to arrest the said Miller for the offence charged in said complaint.

That thereupon, on said date, in pursuance of said warrant and under said complaint, the said F. P. Wilson, the Sheriff of said County of Riverside, State of California, did serve the same and arrest your petitioner.

That your petitioner is now under arrest and restraint on said charge and complaint and warrant and is detained, confined and restrained of his liberty by said F. P. Wilson, Sheriff of said Riverside County, in accordance therewith;

That the violation of the law of the State of California alleged and charged in said last named complaint and action is the same in kind, to-wit, the employment of a female for more than eight hours a day, as was alleged and charged in the said first named complaint and action, the Statute of the State of California therein referred to being the same in each case, but that the alleged act and employment referred to in said last named complaint and action is and was a different act and employment from that alleged and charged in the first named complaint and action, to-wit, referred to the employment of a female on a different day from that charged in the former action.

Your petitioner alleges that the Statute of the State of California referred to in each of said complaints and actions and the only Statute or law which your petitioner was alleged or claimed in said complaints and actions to have violated, was that certain statute of the State of California, approved by the Governor of the State of California on March 22, 1911, after the same had been duly enacted by the People of the State of California represented in Senate and Assembly, which Statute went into effect on May 22, 1911, and which Statute, including its title, is in words and figures as follows:

"Chapter 238.

An act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry,

hotel or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act.

6 (Approved March 22, 1911.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty eight hours during any one week; provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

SEC. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

SEC. 3. Any employer who shall require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in Section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than $50 nor more than $200, or imprisoned in the county jail not less than five nor more than thirty days, or both fined and imprisoned."

That said statute of the State of California was enacted and approved in violation of the terms of the constitution of the State of California and of the Constitution of the United States of America,

nd the same is therefore unconstitutional, null, void and of no effect; that in particular said statute was passed in violation of the terms of Section 22 and Section 25, Subdivisions 2 and 33, of Article IV, and Section 1 of Article I, all of the onstitution of the State of California, and of the 14th Amendment o the Constitution of the United States of America; that your peti-oner is accordingly restrained of his liberty as aforesaid contrary o the Constitution of the State of California and to the Constitution f the United States of America.

That no prior application for a writ of habeas corpus has been ade to any Court or to any Judge thereof, and no application or a writ of habeas corpus has been made other than this appli-ation.

That in the opinion of your petitioner it is proper that the writ f habeas corpus should issue originally from this Court, rather han from any District Court of Appeal of the State of California, or the following reasons, to-wit:

That said statute hereinbefore set forth has been and is of great nportance and effect throughout the State of California; that housands of females employed in various industries and callings ave been and now are affected thereby, in this, to-wit, that they ave been and are now being employed for more than eight hours er day, which employment of them for more than eight hours a ay is expressly prohibited by the terms of said statute; that these iolations of said statute have been and are, as your petitioner is nformed and believes, and therefore so alleges, existing in all parts f the State of California; that your petitioner and employers of emales contrary to the terms of said statute throughout the State f California, allege and declare said Statute to be unconstitutional, nd therefore of no legal effect; and therefore, until a decision as o the constitutionality of said statute has been made by the Court f last resort within the State of California, many violations of said tatute will occur and there will be constant and harassing litiga-tion concerning the same.

That in the interests of justice the speedy termination of litigation can be accomplished only by a prompt decision of he Court of last resort of the State of California.

That your petitioner is informed and believes, and therefore lleges the fact to be that many other persons engaged in the opera-ion of hotels throughout the State of California have been threat-ned with arrest and prosecution for violation of said statute, for em-loying females for more than eight hours per day; and that a inal decision by this Court alone will prevent diverse and conflict-ng rulings with reference to the constitutionality of said statute, nd alone will prevent vexatious litigation thereunder.

That said statute is unconstitutionally discriminatory and is in iolation of the terms of Sec. 25, of Article IV, and of Constitution f the State of California, for the following, among other reasons: That it is expressly provided in said statute that the limitation to ight hours a day and forty-eight hours a week therein specified hall not apply to the employment of females in harvesting, curing, anning or drying of any variety of perishable fruit or vegetable,

whereas it is a fact that the character of work generally and usually performed by females employed in hotels is much less arduous or calculated to injure the health and well-being of females than that expressly permitted by said statute to be performed by said specified exception; that hotel-keeping is an important and substantial business occupation in California and provides a livelihood for thousands of women, and that the foregoing discrimination is a substantially damaging one, inasmuch as it is impossible to employ females profitably in hotels for many purposes for less than nine hours a day or fifty-four a week;

That said statute is unconstitutional and particularly is in violation of the terms of Sec. 1 of Art. 1 of the Constitution of the State of California and of the Fourteenth Amendment to the
9 Constitution of the United States of America for the following, among other reasons: That said statute is not, either by its express terms or by its necessary effect, a reasonable or justifiable withdrawal of and exception to the right of private contract reposed in citizens and residents of the State of California by said constitutional provisions, and the prohibitions contained in said statute are not reasonable and are not necessary for the welfare of females employed in many of the employments therein specified, and particularly not in hotel employments; that it is necessary to the profitable employment of women in several important occupations in hotels that they be employed for at least nine hours a day and for more than forty-eight hours a week; that the nature of such occupation is such that it is necessary for the hotels to have many women so employed in attendance and subject to call for a period of nine hours a day and for at least fifty-four hours a week, though as a fact the actual occupation of a great number of females so employed in their duties seldom exceeds seven hours a day; that the usual and ordinary occupations of females employed in hotels, to-wit, as chambermaids and as waitresses, is an occupation much less arduous in its character and much more healthful in its surrounding circumstances than in the majority of employments for women on which said statute places no restrictions on the right of private contract.

Wherefore petitioner prays that a writ of habeas corpus may be granted and issued by this honorable Court, or by a Judge thereof, directed to the said F. P. Wilson, as Sheriff of the said County of Riverside, to have the body of said F. A. Miller before this honorable Supreme Court, at a time and place therein to be specified, to do and receive what shall then and there be considered by this honorable Court concerning the said F. A. Miller, together
10 with the time and cause of his detention and the said writ, and that the said F. A. Miller may be restored to liberty; and your petitioner does further pray that, pending said return as aforesaid, he may be admitted to bail in an amount to be fixed by this honorable Court.

F. A. MILLER,
Petitioner.

FLINT, GRAY & BARKER.
By PURINGTON & ADAIR,
Attorneys for Petitioner.

11 "EXHIBIT A."

"In the Justice's Court of Riverside Township, of the County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

Complaint, Criminal.

F. P. Wilson, being duly sworn, on oath, says that the crime of a misdemeanor has been committed, and that the above named defendant F. A. Miller is guilty thereof: Committed as follows:

The said F. A. Miller, in Riverside Township, in the said County of Riverside, State of California, on the 12 day of June, A. D. 1911, being then and there the proprietor of the Glenwood Hotel in the City of Riverside, and the employer of females to work therein, did then and there employ one Emma Hunt a female person, to work therein as an employé in said hotel, and did then and there unlawfully employ, permit and require said Emma Hunt to work therein during said 12 day of June, 1911, to-wit: for the period of nine hours, contrary to the Statute in such case made and provided, and against the peace and dignity of the People of the State of California.

F. P. WILSON.

Subscribed and sworn to before me this 13 day of June, A. D. 1911.

HOLTON WEBB,
Justice of the Peace."

Endorsement.

"No. —. Docket 9, Page 73. Justice's court. Township of Riverside, County of Riverside. The People of the State of California against F. A. Miller. Complaint. Filed this 13 day of June, A. D. 1911. Holton Webb, Justice of the Peace."

12 In the Justice's Court of Riverside Township, County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

Warrant of Arrest.

P. C., Sec. 1427.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State:

Complaint upon oath having been this day made before me, Holton Webb, Justice of the Peace of said Township, by F. P. Wilson that the offense of a misdemeanor has been committed, and accusing F. A. Miller thereof:

You are therefore commanded forthwith to arrest the above named F. A. Miller and bring him before me forthwith, at my office in the town of Riverside in said Township, in said County of Riverside to be dealt with according to law.

Witness my hand this 13th day of June A. D. 1911 and I direct that this warrant may be served at any hour of the night or day.

"HOLTON WEBB,"
Justice of the Peace of said Township.

I hereby certify that I received the above warrant on the 13th day of June A. D. 1911 and served the said warrant by arresting the within named Defendant F. A. Miller and bringing him into Court this 13th day of June A. D. 1911.

F. P. WILSON,
Sheriff of Riverside County.

In the Justice's Court of Riverside Township, County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

13 The above named F. A. Miller having been brought before me under this Warrant is committed for examination to the custody of the — of the County of Riverside. Dated this 13th day of June A. D. 1911.

HOLTON WEBB,
Justice of the Peace of said Township.

(On outside as follows:) No. —. Docket 9. Page 73. Justice's Court, Riverside Township, County of Riverside. The People of the State of California, Plaintiff, vs. F. A. Miller, Defendant. Warrant of arrest. Filed —— —, 19—. —— ——, Justice of the Peace of said Township.

14 STATE OF CALIFORNIA,
County of Riverside, ss:

F. A. Miller, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the foregoing petition subscribed by him and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

F. A. MILLER.

Subscribed and sworn to before me this 13 day of June 1911.

[SEAL.] W. A. PURINGTON,
Notary Public in and for the County of Riverside, State of California.

15 [Endorsed:] Copy. Crim. 1686. In the Supreme Court of the State of California. In the Matter of the Application of F. A. Miller for a Writ of Habeas Corpus. Petition. Filed June 14, 1911. B. Grant Taylor, Clerk, by Erb, Deputy. Flint, Gray & Barker, Suite 1027 Title Insurance Building, Fifth and Spring Streets, Los Angeles, California. Telephones: Home 10601. Sunset, Main 685.

16 *Order for Writ of Habeas Corpus.*

In the Supreme Court of the State of California. In Bank.

Crim. No. 1686.

In the Matter of the Application of F. A. MILLER for a Writ of Habeas Corpus.

By the COURT: On reading and filing the within petition, it is ordered that a writ of habeas corpus issue as therein prayed, returnable before the Supreme Court in bank at San Francisco, on Monday the third day of July, 1911, at ten o'clock A. M. Ordered further, that pending the further order of this Court the petitioner be released from custody upon making a deposit of one hundred dollars with the Sheriff, or upon an undertaking of bail in the penal sum of two hundred dollars, sureties to be approved by the Superior Judge of Riverside County. Condition of the undertaking that petitioner will conform to all orders of this Court.

June 16, 1911.

BEATTY, *C. J.*

Filed June 16, 1911. B. Grant Taylor, Clerk. By I. Erb, Deputy.

17 In the Supreme Court of the State of California.

In the Matter of the Application of F. A. MILLER for a Writ of Habeas Corpus.

Answer to Return of Sheriff, etc.

To the Supreme Court of the State of California:

Comes now the petitioner, F. A. Miller, and answering and traversing the Return filed herein by F. P. Wilson, Sheriff of the County of Riverside, State of California, admits, alleges and denies as follows:

Petitioner admits that he was arrested and is held under arrest as set forth in said Return, except that said petitioner alleges that such arrest and restraint are illegal and contrary to law for the reasons hereinafter set forth, to-wit:

That your petitioner is a male citizen of the United States, over the age of twenty-one years, a resident of the city of Riverside, in said county of Riverside, State of California;

That heretofore, to-wit, on the 25th day of May, 1911, your petitioner, while attending to his duties, occupation and business as proprietor of the Glenwood Hotel, sometimes called Glenwood Mission Inn, at the said city of Riverside, was arrested by said Sheriff of Riverside County, and taken into custody, upon a certain charge against him for committing an alleged misdemeanor set forth in that certain complaint, a copy of which is as follows, to-wit:

18 "In the Justice's Court of Riverside Township of the County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

Complaint—Criminal.

F. P. Wilson, being duly sworn, on oath, says that the crime of a misdemeanor has been committed, and that the above named defendant F. A. Miller is guilty thereof: Committed as follows:

The said F. A. Miller, in Riverside Township, in the said County of Riverside, State of California, on the 24th day of May, A. D. 1911, being then and there the proprietor of the Glenwood Hotel in the City of Riverside, and the employer of females to work therein, did then and there employ one Emma Hunt, a female person, to work therein as an employé in said hotel, and did then and there unlawfully employ, permit and require said Emma Hunt to work therein during said 24th day of May, 1911, to-wit: for the period of nine hours, contrary to the Statute in such case made and

provided, and against the peace and dignity of the People of the State of California.

F. P. WILSON.

Subscribed and sworn to before me this 25th day of May, A. D. 1911.

HOLTON WEBB,
Justice of the Peace."

Endorsement: "No. —. Docket 9, Page 54. Justice's Court, Township of Riverside, County of Riverside. The People of the State of California against F. A. Miller. Complaint. Filed this 25th day of May, A. D. 1911. Holton Webb, Justice of the Peace."

19 Your petitioner further alleges that on the 25th day of May, in the year 1911, said complaint was made before Holton Webb, Justice of the Peace in Riverside Township, in the County of Riverside, State of California, by said F. P. Wilson, and said complaint was regularly and duly sworn to by said F. P. Wilson as aforesaid, and thereupon, on the said 25th day of May, 1911, said Justice of the Peace of said Riverside Township, Holton Webb, issued a warrant in accordance with law, authorizing and directing the Sheriff of Riverside County, State of California, to arrest the said F. A. Miller for the offence charged in said complaint.

That thereupon, on said date, in pursuance of said warrant and under said complaint, the said F. P. Wilson, as Sheriff of said County of Riverside, State of California, did serve the same and arrest your petitioner; that thereafter, to-wit, on May 26th, 1911, after your petitioner had been duly arraigned on said charge and had pleaded not guilty thereto, your petitioner was duly tried under the laws of the State of California, upon said complaint, before said Holton Webb, a Justice of the Peace of said Riverside Township; and thereupon, to-wit, on said 26th day of May, 1911, your petitioner was duly convicted of said offence charged in said complaint and action;

That said proceedings were thereupon taken, under the laws of the State of California, that an appeal was thereupon perfected, from the decision and judgment of the said Holton Webb, as Justice of the Peace of said Riverside Township, to the Superior Court of Riverside County, State of California.

That thereafter, to-wit, on the 31st day of May, 1911, after due and proper proceedings in accordance with the laws of the State of California had, your petitioner was duly tried by said
20 Superior Court of Riverside County, after said appeal, a trial by jury having been duly waived, and judgment was thereupon rendered by said Court, to-wit, on June 10, 1911, duly acquitting your petitioner of the offence charged in said complaint and action, and thereupon your petitioner was duly discharged; that the sole ground on which said judgment of acquittal was made was that the statute (a copy of which is hereinafter inserted), was unconstitutional and void.

That thereafter, to-wit, on the 13th day of June, 1911, your petitioner, while attending to his duties, occupation and business as Proprietor and Manager of the said Glenwood Hotel, sometimes called Glenwood Mission Inn, at the said City of Riverside, was again arrested by said Sheriff of Riverside County and taken into custody, upon a certain charge against him for committing an alleged misdemeanor set forth in that certain complaint, a copy of which is hereto annexed and made a part hereof, being marked "Exhibit A."

Your petitioner further alleges that on the 13th day of June, in the year 1911, said complaint was made before Holton Webb, Justice of the Peace in Riverside Township, in the County of Riverside, State of California, by F. P. Wilson, and said complaint was regularly and duly sworn to by said F. P. Wilson as aforesaid, and thereupon on said 13th day of June, 1911, said Justice of the Peace of said Riverside Township, in said County of Riverside, State of California, issued a warrant in accordance with law, authorizing and directing the Sheriff of Riverside, State of California, to arrest the said Miller for the offence charged in said complaint.

That thereupon, on said date, in pursuance of said warrant and under said complaint, the said F. P. Wilson, the Sheriff of
21 said County of Riverside, State of California, did serve the same and arrest your petitioner.

That your petitioner is now under arrest and restraint on said charge and complaint and warrant and is detained, confined and restrained of his liberty by said F. P. Wilson, Sheriff of said Riverside County, in accordance therewith:

That the violation of the law of the State of California alleged and charged in said last named complaint and action is the same in kind, to-wit, the employment of a female for more than eight hours a day, as was alleged and charged in the said first named complaint and action, the Statute of the State of California therein referred to being the same in each case, but that the alleged act and employment referred to in said last named complaint and action is and was a different act and employment from that alleged and charged in the first named complaint and action, to-wit, it referred to the employment of a female on a different day from that charged in the former action.

Your petitioner alleges that the Statute of the State of California refered to in each of said complaints and actions and the only Statute or law which your petitioner was alleged or claimed in said complaints to have violated, was that certain statute of the State of California, approved by the Governor of the State of California on March 22, 1911, after the same had been duly enacted by the People of the State of California represented in Senate and Assembly, which Statute went into effect on May 22, 1911, and which Statute, including its title, is in words and figures as follows:

"Chapter 238.

An act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry,

hotel or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged
22 in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act.

(Approved March 22, 1911.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty eight hours during any one week; provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

SEC. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

SECTION 3. Any employer who shall require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in Section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than $50, nor more than $200, or imprisoned in the county jail not less than five nor more than thirty days, or both fined and imprisoned."

23 That said statute of the State of California was enacted and approved in violation of the terms of the constitution of the State of California and of the Constitution of the United

States of America, and the same is therefore unconstitutional, null, void and of no effect; that in particular said statute was passed and is in violation of the terms of Section 21 of Art. I, of Section 11 of Art. I, of Subdivisions 2 and 33 of Section 25 of Art. IV, and of Section 18, Art. XX, all of the Constitution of the State of California, and of the 14th Amendment to the Constitution of the United States of America; that your petitioner is accordingly restrained of his liberty as aforesaid illegally and contrary to the Constitution of the State of California and to the Constitution of the United States of America.

That no prior application for a writ of habeas corpus has been made to any Court or to any Judge thereof, and no application for a writ of habeas corpus has been made other than this application.

That said Statute is unconstitutional and void by reason of the following:

Your petitioner is engaged as manager, in conducting and operating a hotel, to-wit, said hotel hereinbefore referred to, which hotel is a public hotel open to the public for their accommodation for all members thereof who may present themselves as guests being provided with the means of paying for their accommodation and in a fit and proper condition to be received as guests; that said hotel, in common with numerous other hotels throughout the State, employs many female employees in the operation thereof, the larger portion thereof being employed either as waitresses or as chambermaids, though numbers are employed in other work; that the employment of said females is in all respects a lawful business, and the
24 work of said female employees is in all respects healthful and not arduous; that it is necessary to said hotel, as to all other hotels employing females in similar work, that the employment of each female shall last for at least nine hours a day, and that said females, or at least a large number of them, should similarly be employed for seven days a week in most cases; that the period per day of actual work performed by such female employees covers only a portion of said period of at least nine hours per day, but that by reason of the reasonable demands of the public for its accommodation as guests the hours when such female employees must be subject to call equals at least nine hours per day, and seven days per week in most cases; that there are also many females employed in your petitioner's hotel and in many other hotels in the state whose duties are entirely of a different character from those of waitresses and chambermaids, some being employed as managers and assistant managers, as cashiers, as book-keepers, as stenographers, as housekeepers, and in many and divers kinds of work; and that the work of all of them is lawful, healthful and not arduous, and their duties all require that such employees shall be on duty, at least nine hours per day and, in most cases, seven days per week, reasonable holidays and vacations excepted;

That said Act, if valid, would operate upon all of said female employees and upon their employers, regardless of the diverse and varied nature of their work, and regardless of the fact that said work of various kinds is all healthful and not arduous; that, also, if

valid, said Act would constitute an unreasonable and unnecessary interference with the freedom of such women to contract for their labor and so earn a livelihood as to them might prove possible and best; that such restrictions as are in the Act prescribed are unduly and unreasonably burdensome, both upon the said female
25 employees and upon their employers; that, if said Act were enforced, large numbers theretofore employed in the aforesaid occupations, as in many other occupations, would lose their employment by reason of the fact that it would no longer be possible to hotels to employ such female employees in such occupations; that the restrictions in the Act provided are in no wise necessary to the health of such female employees;

That furthermore said Act, particularly as it refers to the females employed in hotels, contains no classification of such female employees according to the nature of their work, whether based on natural distinctions in the nature of the various kinds of work or on constitutional distinctions, and said restrictions are in all respects unreasonable, unnecessary to the health of said female employees, unduly burdensome to both employers and employees, and not justifiable as an exercise by the State of its Police Power;

That said Statute is also unconstitutionally discriminatory for the following, among other reasons:

That it is expressly provided in said statute that the limitation to eight hours a day and forty-eight hours a week therein specified shall not apply to the employment of females in harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, whereas it is a fact that the character of work generally and usually performed by females employed in hotels is much less arduous or calculated to injure the health and wellbeing of females than that expressly permitted by said statute to be performed by said specified exception; that hotel-keeping is an important and substantial business occupation in California and provides a livelihood for thousands of women, and that the foregoing discrimination is a substantially damaging one, inasmuch as it is impossible to employ females profitably in hotels for many purposes for less than
26 nine hours a day or fifty-four hours a week;

That furthermore said Act is discriminatory in that it restricts the hours of employment of females in hotels whereas it does not similarly or at all restrict the hours of the employment of females in boarding-houses, lodging-houses or rooming-houses, although the duties of female employees in all of them are identical, and the conditions as to healthfulness and arduousness of work are the same;

That said Act is discriminatory also in that it restricts the hours of employment of large numbers of females in hotels whose occupations, to-wit as managers, or assi-tant-managers, or cashiers, or bookkeepers, or stenographers, is identical with that of large numbers of females identically employed in other branches of business on which said Act places no restrictions;

That said Act is discriminatory also in that the work of waitresses and chambermaids in hotels is identical as to all its conditions with that of domestic servants employed in private homes;

That by reason of the premises said Act unconstitutionally discriminates against hotel-keepers and their female employees, among others, and in favor of many other classes of employees and female employees.

Wherefore, your Petitioner prays that said statute and Act be declared unconstitutional and void, particularly so far as it purports to apply to himself as an hotel-keeper, and that your Petitioner be discharged from restraint and custody, said restraint and custody being declared unlawful, and that he be restored to his liberty.

F. A. MILLER,
Petitioner.

FLINT, GRAY & BARKER, AND
PURINGTON & ADAIR,
Attorneys for Petitioner.

27 "EXHIBIT A."

"In the Justice's Court of Riverside Township of the County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

Complaint—Criminal.

F. P. Wilson, being duly sworn, on oath, says that the crime of a misdemeanor has been committed, and that the above named defendant F. A. Miller is guilty thereof: Committed as follows:

The said F. A. Miller, in Riverside Township, in the said County of Riverside, State of California, on the 12 day of June, A. D. 1911, being then and there the proprietor of the Glenwood Hotel in the City of Riverside, and the employer of females to work therein, did then and there employ one Emma Hunt a female person, to work therein as an employé in said hotel, and did then and there unlawfully employ, permit and require said Emma Hunt to work therein during said 12 day of June, 1911, to-wit: for the period of nine hours, contrary to the Statute in such case made and provided, and against the peace and dignity of the People of the State of California.

F. P. WILSON.

Subscribed and sworn to before me this 13 day of June, A. D. 1911.

HOLTON WEBB,
Justice of the Peace."

Endorsements.

"No. —. Docket 9, Page 73. Justice's Court, Township of Riverside, County of Riverside. The People of the State of California against F. A. Miller. Complaint. Filed this 13 day of June, A. D. 1911. Holton Webb, Justice of the Peace."

28 STATE OF CALIFORNIA,
County of Riverside, ss:

F. A. Miller, being duly sworn, deposes and says that he is the Petitioner named in the foregoing "Matter of the Application of F. A. Miller for a Writ of Habeas Corpus"; that he has read the foregoing Answer to Return of Sheriff etc. subscribed by him and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

F. A. MILLER.

Subscribed and sworn to before me this 10th day of July, 1911.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk Supreme Court, State of California,
By I. ERB, *Deputy Clerk.*

29 [Endorsed:] Copy. Crim. No. 1686. In the Supreme Court of the State of California. In the Matter of the Application of F. A. Miller for a Writ of Habeas Corpus. Answer to return of sheriff, etc. Filed July 10, 1911. B. Grant Taylor, Clerk, by I. Erb. Filed in court July 10, 1911. B. Grant Taylor, Clerk. Service of the within return hereby admitted this 15th day of July, 1911. U. S. Webb, Att'y General.

30 In the Supreme Court of the State of California.

In the Matter of the Application of F. A. MILLER for a Writ of Habeas Corpus.

STATE OF CALIFORNIA,
County of Riverside, ss:

I, Lyman Evans, District Attorney of the County of Riverside, State of California, hereby acknowledge the receipt of a true copy of the Application for a writ of Habeas Corpus in the above entitled matter, which said writ, having been duly granted, is returnable to said Court on the 3rd day of July 1911, and hereby admit due service of the same, this 23rd day of June 1911.

LYMAN EVANS,
District Attorney of the County of Riverside.

Purington & Adair, Attorneys at Law, Riverside, Cal.

31 [Endorsed:] No. Crim. 1686. In the Supreme Court of the State of California. In the Matter of the Application of F. A. Miller for Writ of Habeas Corpus. Acknowledgment of Service. Filed Jul- 10, 1911. B. Grant Taylor, Clerk, by A. S. Ramage, Deputy. Punington & Adair, Attorneys at Law, Riverside, California.

32 *Order Remanding Petitioner.*

In the Supreme Court of the State of California. In Bank.

Crim. 1686.

In re MILLER on Habeas Corpus.

MONDAY, *May* 27, 1912.

Let the petitioner be remanded to the custody of the Sheriff of Riverside County.

SHAW, *J.*

We concur:

ANGELLOTTI, *J.*
SLOSS, *J.*
LORIGAN, *J.*
MELVIN, *J.*
BEATTY, *C. J.*

33 Habeas Corpus.

STATE OF CALIFORNIA,
County of Riverside, ss:

In the Supreme Court of the State of California.

The Return of F. P. Wilson, Sheriff of the County of Riverside, to the Writ of Habeas Corpus Hereto Annexed.

In obedience to the writ of habeas corpus hereto annexed I do hereby certify and return to the Supreme Court, that before the coming to me of the within writ, the said F. A. Miller was arrested by me, and is detained by virtue of an order of arrest, to me directed, a copy of which annexed I transmit to you. Nevertheless, I shall have the body of said F. A. Miller before you at the day and place within mentioned, as I am within commanded.

June 21, 1911.

F. P. WILSON.
Sheriff Riverside County, State of California.

34 In the Justice's Court of Riverside Township, County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

Warrant of Arrest.

P. C., Sec. 1427.

The People of the State of California to any Sheriff, Constable, Marshal, or Policeman in this State:

Complaint upon oath having been this day made before me, Holton Webb, Justice of the Peace of said Township, by F. P. Wilson that the offense of a misdemeanor has been committed, and accusing F. A. Miller thereof:

You are therefore commanded forthwith to arrest the above named F. A. Miller and bring him before me forthwith, at my office in the town of Riverside, in said Township, in said County of Riverside to be dealt with according to law.

Witness my hand this 13th day of June A. D. 1911 and I direct that this warrant may be served at any hour of the night or day.

HOLTON WEBB,
Justice of the Peace of said Township.

I hereby certify that I received the above warrant on the 13th day of June A. D. 1911 and served the said warrant by arresting the within named Defendant F. A. Miller and bringing him into Court this 13th day of June A. D. 1911.

F. P. WILSON,
Sheriff of Riverside County.

35 [Endorsed:] Copy. No. —. Docket 9, Page 73. Justice's Court, Riverside Township, County of Riverside. The People of the State of California, Plaintiff, vs. F. A. Miller, Defendant. Warrant of arrest. Filed June 13th, 1911. Holton Webb, Justice of the Peace of said Township.

In the Justice's Court of Riverside Township, County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

The above named F. A. Miller having been brought before — under this Warrant is committed for examination to the custody of

the Sheriff of the County of Riverside Dated this 13th day of Jun
A. D. 1911.

HOLTON WEBB,
Justice of the Peace of said Township.

36 *Habeas Corpus.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

In the Supreme Court of the State of California.

The People of the State of California to F. P. Wilson, Sheriff Rive
side County, Greeting:

We command you, that you have the body of F. A. Miller b
you imprisoned and detained, as it is said, together with the tim
and cause of such imprisonment and detention by whatsoever nam
said F. A. Miller shall be called, or charged, before the Hon. Su
preme Court at San Francisco, Wells Fargo Building, Cor. Secon
& Mission Streets on the 3rd day of July, A. D. 1911, at 10 o'cloc
A. M., of that day, to do and receive what shall then and there b
considered concerning the said F. A. Miller. And have you the
and there this writ.

By order of Supreme Court.

Witness, the Hon. W. H. Beatty, Chief Justice of the Supreu
Court aforesaid, with the seal thereof hereunto affixed, this 16t
day of June, A. D. 1911.

Attest:

B. GRANT TAYLER, *Clerk.*
[SEAL.] By I. ERB, *Deputy Clerk.*

37 [Endorsed:] No. —. Supreme Court of California. —
vs. ——. Writ of habeas corpus.

38 [Endorsed:] Crim. 1686. In the Supreme Court of th
State of California. In the Matter of the Application o
F. A. Miller for a writ of habeas corpus. Return. Filed Jul- 1
1911. B. Grant Taylor, Clerk, by Erb, Deputy.

39 *Order of Submission.*

In the Supreme Court of the State of California. In Bank.

Crim. 1686.

Ex Parte MILLER.

Wm. Denman, Esq., asks and is granted permission to appear a
Amicus Curiæ.

Hon. F. P. Flint and W. A. Purington, Esq., on behalf of pet

tioner, Attorney General U. S. Webb, on behalf of respondent, and Mr. Denman, present their respective arguments. Printed Points and Authorities for petitioner filed and Mr. Denman granted five days to file brief. Cause ordered submitted on filing of such brief.
July 10, 1911.

40 *Order of Final Submission.*

In the Supreme Court of the State of California. In Bank.

Crim. 1686.

Ex Parte MILLER, on Habeas Corpus.

By the Court:

A brief having been filed pursuant to an Order entered herein July 10, 1911, matter submitted as of this date.
July 18, 1911.

BEATTY, *C. J.*

41 Crim. No. 1686. In Bank. May 27, 1912.

In the Matter of the Application of F. A. MILLER for a Writ of Habeas Corpus.

Application for Writ of Habeas Corpus Prayed to be Directed against F. P. Wilson, Sheriff of the County of Riverside.

For Petitioner—Flint, Gray & Barker and Gray, Barker, Bowen, Allen, Van Dyke & Jutten.
For Respondent—Lyman Evans, District Attorney; Purrington & Adair; William Denman, amicus curiæ; G. S. Arnold, of Counsel; Thos. F. Griffin and Leon Yanckwich, as amicus curiæ.

The petitioner applies for release from custody on a charge of violating the provisions of the act of March 22, 1911, forbidding the employment of women in certain establishments for more than eight hours in one day, or more than forty-eight hours in one week. (Stats. 1911, 437.) The specific charge is that on June 12, 1911, he employed and thereupon required Emma Hunt, a female, to work during that day for nine hours in the Glenwood Hotel, as an employee therein. His contention is that the act is unconstitutional and void.

Three grounds are urged in support of this claim: 1. That the restrictions imposed by the statute upon the freedom of contract are in violation of section 1, article I, and section 18 of article XX, of the constitution, and that it is consequently invalid; 2. That the act is special, that it is not uniform in its operation, and that it makes arbitrary discriminations between persons and classes of persons similarly situated contrary to the limitations of sections 11 and

21, article I, and section 25 of article IV of the constitution; 3. That it embraces two distinct subjects, contrary to section 24, article IV of the constitution.

The material parts of the statute are as follows:

"SECTION 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more tha- forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

"SECTION 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment."

42 Section 3 declares it a misdemeanor, punishable by fine or imprisonment, or both, for any employer to require any female to work in any of the places mentioned in section 1 more than the number of hours allowed by the act, during any one day of twenty-four hours.

1. Section 18 of article XX of the constitution provides that "no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession." (2) This section prohibits any discrimination of this kind based solely on distinctions of sex. But, as in case of the other constitutional guaranties, this provision is subject to such reasonable regulations as may be imposed in the exercise of police powers. It does not forbid such reasonable restrictions upon the hours of labor of women as may be necessary for the protection and preservation of the public health. (Ex parte Hayes, 98 Cal. 556; Foster v. Commissioners, 102 Cal. 490.)

2. Recognizing the importance of personal liberty, our state constitution at the outset declares that all persons have an inalienable right to enjoy life and liberty and to acquire and possess property. (Art. I, sec. 1.) This, necessarily, includes liberty to work for the purpose of acquiring property, or to accomplish any desired lawful object, and liberty to continue that work each day a sufficient time to gain more than is required for the daily needs. Hence comes the right to make contracts to serve and contracts to employ such service. There can be no contract by the employee to serve without a corresponding contract by the employer to hire and receive such service. (4) Therefore, although the act in question provides a punishment only for the employer, its prohibition applies to both and it clearly restricts the liberty of both the employer and the

employed, in the specified establishments, to freely contract with each other as to the length of a day's service or to perform such contracts, when made. Consequently, it does, to that extent, take away the liberty guaranteed by this provision of the constitution.

Although this guaranty of the constitution is apparently absolute and unqualified, yet it is well established that it is subject to the exercise, by the legislature, of what are known as the police powers of the state.

Says the Supreme Court of the United States in Holden v. Hardy, 169 U. S. 391: "This right of contract, however, is in itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers," a power which "may lawfully be resorted to for the purpose of preserving public health, safety, or morals, and a large discretion is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests." (See, to the same effect, Ex parte Whitwell, 98 Cal. 78; Ex parte Tuttle, 91 Cal. 591; In re Yick Wo, 68 Cal. 297; Lawton v. Steele, 152 U. S. 136.)

Because of the great value to mankind and the consequent paramount importance of the preservation of individual liberty, it is universally admitted and held that the police powers of the legislature are not absolute or unlimited. These personal rights cannot be taken away or impaired at the mere will of the legislature, nor at all, unless the public welfare demands it. So far as the
43 effect on himself alone is concerned, each person has the absolute right to judge for himself whether the hard labor which he voluntarily performs is for his best interest or not. The legislature cannot judge for persons in this respect and interfere solely to prevent them from injuring themselves by excessive labor. The injury must be of such character and extent and to such a number of persons that it may be reasonably supposed that it will cause injury to others, that is, to the community in general, or, as it is expressed, to the public health and general welfare. (Lawton v. Steele, supra.)

The means adopted to produce the public benefit intended, or to prevent the public injury, must be reasonably necessary to accomplish that purpose and not unduly oppressive upon individuals. The determination of the legislature as to these matters is not conclusive, but is subject to the supervision of the courts, and if the above qualities are wanting, a law arbitrarily interfering with the right of contract, or imposing restrictions upon lawful occupations, will be held void. (Ex parte Whitwell, supra; Lawton v. Steele, supra; Holden v. Hardy, supra; Tiedman, Police Powers, p. 17; Freund, Police Powers, sec. 63; Am. & Eng. Ency. of Law, 936.) In the language of Justice Harlan in Mugler v. Kansas, 123 U. S. 161: "If, therefore, a statute purporting to have been enacted to preserve public health, the public morals or the public safety, has no real or substantial relation to these objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the court so to adjudge, and thereby give effect to the constitution." If this

were not so, the constitutional guaranties of the personal right to liberty and property would be wholly subject to the will of the majority acting through the legislature.

It is settled, however, that some occupations may have a tendency to injure the health of those engaged therein, that this injury may be so general or extensive as to affect the public health and general welfare, and that in such cases the legislature may, in the exercise of the police power of the state, enact laws limiting the time of labor therein to eight hours a day. Thus, laws have been upheld restricting to eight hours the daily labor of persons working in underground mines, or in smelters and quartz mills, and the legislative judgment on the subject of the extent and effect of the injury was considered sufficiently supported to be beyond judicial interference. (Holden v. Hardy, supra; In re Martin, 157 Cal. 51; In re Martin, 157 Cal. 60.)

(3) So, also, it has been recognized that some occupations followed by women, though less arduous than those generally followed by men, may have such a tendency to injure their health, if unduly prolonged, that laws may be enacted restricting their time of labor therein to ten hours a day. The application of these laws exclusively to women is justified on the ground that they are less robust in physical organization and structure than men, that they have the burden of child-bearing, and, consequently, that the health and strength of posterity and of the public in general is presumed to be enhanced by preserving and protecting women from exertion which men might bear without detriment to the general welfare. (See Commonwealth v. Hamilton Mfg. Co., 120 Mass. 383; Wenham v. State, 65 Neb. 394; State v. Buchanan, 29 Wash. 602; State v. Muller, 48 Ore. 252; Muller v. Oregon, 208 U. S. 412; Withey v. Bloem, 163 Mich. 419; Ritchie v. Wayman, 244 Ill. 509; State v. Somerville, 122 Pac. (Wash.) 324.)

44 Counsel for the respondent do not advance the proposition that a general restriction of all women to eight hours a day for all work would be a proper police regulation. This precise question is not involved. The act does not limit the time of occupation or exertion by females. It limits only the time for which a female may "be employed," that is to say, engaged in service for another. The time of such service does not usually measure the whole time of daily toil, labor or exertion.

The courts must always assume that the legislature, in enacting laws, intended to act within its lawful powers and not to violate the restrictions placed upon it by the constitution. We must take this statute as a law intended for a police regulation to preserve, protect or promote the general health and welfare. As has been already stated, a large discretion is vested in the legislature to determine what measures are necessary for that purpose. Upon this question of fact, as also with regard to the facts upon which a lawful classification and discrimination depends, to be hereinafter discussed, the rule is well settled that the legislative determination that the facts exist which make the law necessary, must not be set aside or disregarded by the courts, unless the legislative decision

is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted, and of which the courts may properly take notice. (Stockton v. Stockton, 41 Cal. 159; Ex parte Tuttle, supra; In re Spencer, 149 Cal. 400; In re King, 157 Cal. 164.) The power of the court to declare a statute unconstitutional is "conceded to be always one of the utmost delicacy in its exercise, and never to be exerted except when the conflict between the statute and the constitution is palpable and incapable of reconciliation." (Stockton v. Stockton, supra.) If reasonable men, upon a consideration of the facts might rationally reach the conclusion that the enforcement of the statute would tend to promote or preserve, in some appreciable degree, the public health or general welfare, the law must be accredited as a proper exercise of the police power, although other reasonable persons might take a different view.

The reasons which justify a restriction upon the hours of employment or labor of women, as distinguished from men, are fully stated in the cases heretofore cited upon that subject and need not be further considered here. Restrictions to ten hours a day have always been upheld. In Illinois a restriction to eight hours in factories was declared invalid. (Ritchie v. People, 155 Ill. 98.) In Washington, a similar law was held valid. (State v. Somerville, supra.) In the latter case the woman was employed in a factory for the manufacture of paper boxes.

The question of the effect of the various occupations in which women engage, upon their health, is one upon which medical men differ and with respect to which the prevailing opinion changes from time to time. It has not been, and probably never will be, a settled question, either with respect to the deleterious effects of particular occupations, or the hours of labor which measure the limit of safety in each. Women who work for others usually have household or other domestic duties to perform which oblige them to continue at work each day for a much longer period than their time of service. Even those who live at their places of work generally have to make and mend their clothing and do other things for their personal welfare, in addition to the work done for their employers. In view of these circumstances affecting the generality of employed women, it could scarcely be claimed that a limitation to eight hours a day to the time of employment in many of the occupations mentioned in the act is unreasonable as a health regulation. (5) The work in hotels may not be as severe as that in some of the other places covered by the law, but considering the delicate frame of women as compared with men, we can not perceive that the difference is so radical as to make it unreasonable to include employees in hotels among those protected by the law. Doubtless there is a limit below which the legislature can not go. But we can not say that eight hours of employment in work of this character in addition to the labor necessary to be done before and afterward by the employee is unreasonably low and beyond the legislative discretion, or that, in the present condition of common knowledge on the subject, the limitation upon the time of employ-

ment of women in hotels is so manifestly unreasonable and unnecessary for the promotion and preservation of the health and welfare of the human race that the courts can declare that the legislature had no rational ground for imposing it as a police regulation for that purpose. The responsibility, if the law is unwise, is with the legislature.

3. The next objection is that the act is special because there are no reasons for making the restriction as to the particular employments mentioned in the act which do not apply with equal force to other similar occupations. There may be, and probably are, other occupations followed by women which are equally injurious to their health, and which should also be regulated. But if this be true it does not make the law invalid. If there are good grounds for the classification made by the act, it is not void because it does not include every other class needing similar protection or regulation. "The law is not rendered special by the mere fact that it does not cover every subject which the legislature might conceivably have included in it." (Ex parte Martin, 157 Cal. 57.)

The general rules governing this subject are well settled by our decisions. They may be stated as follows: A law is general and uniform in its operation when it applies equally to all persons embraced within the class to which it is addressed, provided such class is made upon some natural, intrinsic or constitutional distinction between the persons composing it and others not embraced in it. It is not general or uniform and it makes an improper discrimination if it confers particular privileges or imposes peculiar restrictions or disabilities upon a class of persons arbitrarily selected from a larger number of persons, all of whom stand in the same relation to the privileges granted or burdens imposed, and between whom and the persons not so favored or burdened no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privileges or burdens. The difference on which the classification is based must be such as, in some reasonable degree, will account for or justify the peculiar legislation. The following cases declare these rules: Smith v. Judge, 17 Cal. 555; Pasadena v. Stimson, 91 Cal. 251; Darcy v. San Jose, 104 Cal. 645; Bloss v. Lewis, 109 Cal. 499; Marsh v. Hanly, 111 Cal. 370; Ex parte Jentzsch, 112 Cal. 474; Ex parte Giambonini, 117 Cal. 574; Krause v. Durbrow, 127 Cal. 684; Pratt v. Browne, 135 Cal. 652; Ex parte Sohncke, 148 Cal. 267.

46 (6) The women employed in hotels are, for the most part, chambermaids and waitresses. It is contended that the work of such persons in hotels is no more arduous or injurious to health than that in lodging houses and boarding houses, that they are all of the same class with respect to the need of such protection, and, hence, that there is no substantial reason or difference in conditions which can justify the protection of those employed in hotels alone. The census returns show that in this state the number of boarding houses and lodging houses, combined, exceeds the number of hotels by about fifty per cent of the number of the latter. As the hotels are usually the larger institutions, it is probable that

the number of women employed therein is about equal to those employed in the other places mentioned. In the matter of numbers there appears to be no ground for distinction. But there are other obvious differences. The patrons of lodging houses and boarding houses use them as places of residence. They are for the most part permanent occupants. Such places partake more of the nature of a home or residence than does a hotel. They are not accessible, as of right, to the public generally, as is the case with hotels. The occupants may be and often are selected by the proprietor, and frequently they compose a class having similar habits, tastes and desires. An acquaintance arises between them and the servants and the servants soon become accustomed to the wants and ways of those by whom their services are required. The occupants of a hotel are of a more transient character. They come and go and change daily. They are usually entire strangers to the servants. Their habits are likely to be irregular and of great diversity as well as unfamiliar to the employees. These respective conditions must, or at least may, make the work of such employees in the other places materially different from those similarly employed in hotels. It is not unreasonable to suppose that those in the other places will be subject to less strain and tension than those who serve the more transient, varied and indiscriminate guests of hotels, to whom they are generally entire strangers. The legislature, in view of all the above facts, may reasonably have so determined. In support of the law, as already stated, the courts are bound to presume that it did make this decision, and as there are sound reasons upon which it may rest, the decision must be accepted as correct. The conditions stated appear to be a sufficient basis for the classification made. In such matters the legislature cannot deal with individual cases. It can provide only for classes, and its decision as to the line of cleavage between classes in some particulars the same and in other particulars different must be upheld where it is based on any reasonable grounds. We are of the opinion, therefore, that the law cannot be declared invalid because of this discrimination.

We cannot say that the exemption of persons employed in harvesting, curing, canning or drying perishable fruits or vegetables from the operation of the law, makes an improper discrimination. (7) These occupations can be carried on only for a short period of each year, the time of the annual ripening of the particular fruits or vegetables. In a cannery devoted to every kind of fruit and vegetable the work may continue much longer, but even those establishments are idle for a large part of the year. There is time for those employed therein to obtain rest and recuperation. It is also to be noted that, looking to the general welfare, there is a greater necessity for facility in obtaining employees to do such work than obtains in ordinary employments, for, unless the work is done at the proper time, great loss must ensue from
47 the perishable nature of the products to be preserved. These are all matters which the legislature could properly take into consideration, and they constitute a sufficient justification for the exception. (See State v. Somerville, supra, where it was held that a

similar exception did not vitiate the women's eight hour law of the state of Washington.)

(8) 4. The title embraces but one general subject—the regulation of female employment. The subdivision of this subject by the particular details stated in the title does not make it embrace two subjects. The title is sufficient in this respect. (1) We find no ground upon which the law can be declared void or the conviction in question invalid.

Let the petitioner be remanded to the custody of the sheriff of Riverside county.

SHAW, *J.*

We concur:
ANGELOTTI, *J.*
SLOSS, *J.*
LORIGAN, *J.*
MELVIN, *J.*
BEATTY, *C. J.*

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of original Opinion filed in this office on the 27th day of May, 1912, in the above entitled cause, as shown by the records of my office.

Witness my hand and the Seal of the Court, this 23rd day of January, A. D. 1913.

[Seal Supreme Court of California.]

B. GRANT TAYLOR, *Clerk,*
By I. ERB, *Deputy Clerk.*

San Francisco Office.

48 [Endorsed:] Crim. 1686. (In the Supreme Court of the State of California.) In the Matter of the Application of F. A. Miller for a Writ of Habeas Corpus. Copy of Decision. Filed May 27, 1912. B. Grant Taylor, Clerk, by I. Erb, Deputy. Flint, Gray & Barker, Suite 1027, Title Insurance Building, Fifth and Spring Streets, Los Angeles, California. Telephones: Home 10601; Sunset, Main 685.

49 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

Crim. No. 1686.

In the Matter of the Application of F. A. MILLER, Petitioner, Plaintiff in Error.

Certificate of Final Judgment.

It is hereby certified that this cause was ordered to be, and was determined in Bank in the Supreme Court of the State of Cali-

fornia, and that the said Court in Bank did on the 27th day of May, 1912, decide said case and render judgment discharging the writ of habeas corpus herein and ordering the petitioner remanded to the custody of F. P. Wilson, sheriff of the county of Riverside, the respondent. And that thereafter, and within the time prescribed by the rules of said court, to-wit: within twenty days after the filing of said judgment, the said petitioner filed in said court his petition presented to said court for a rehearing of the said case in said Supreme Court of the State of California in Bank, and said petition was considered and acted upon by said Supreme Court of the State of California, and on the 26th day of June, 1912, said petition for a rehearing was by said Court denied, and thereupon said judgment was final and the order remanding said petitioner ordered issued thereon.

Wherefore this certificate is ordered to be made a part of the record and to be attested with the seal of said Court.

Dated this 9th day of December, 1912.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

Attest:

[SEAL.] B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California,
By I. ERB, *Deputy Clerk.*

50 [Endorsed:] Crim. No. 1686. United States of America. In the Supreme Court of the State of California. Copy. In the Matter of the Application of F. A. Miller, Petitioner, Plaintiff in Error. Certificate of Final Judgment. Filed Jan. 22, 1913. B. Grant Taylor, Clerk, by Erb, Deputy. Flint, Gray & Barker, Attorneys-at-Law, Equitable Bank Bldg., First and Spring Sts., Los Angeles, Cal. Telephones: Home 10601, Sunset Main 685.

51 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

Crim. No. 1686.

In the Matter of the Application of F. A. MILLER for Writ of Habeas Corpus.

Petition for Writ of Error.

To the Hon. Wm. H. Beatty, Chief Justice of the Supreme Court of the State of California:

The petition of F. A. Miller respectfully shows: That heretofore, to-wit, on the 25th day of May, 1911, he was imprisoned, restrained, detained and confined of his liberty by F. P. Wilson, sheriff of the county of Riverside, state of California; that the said imprisonment,

detention, confinement and restraint were illegal, and the said illegality thereof consisted in this, to-wit: that the only pretense or cause of said arrest or detention was by virtue of a warrant of arrest issued out of the Township Court of the Justice of the Peace of said Riverside township, Hon. Holton Webb Justice, on said 25th day of May, 1911, on the complaint filed therein on said 25th day of May, 1911, charging that the said petitioner, F. A. Miller, had on the 24th day of May, 1911, in said Riverside township, in said county of Riverside, state of California, committed a misdemeanor in that he did wilfully and unlawfully employ a female person, to-wit, one Emma Hunt, to work as an employee in the Glenwood Hotel, sometimes called Glenwood Mission Inn, on said 24th day of May, 1911, for the period of nine hours, contrary to
the statute of said state of California in such case made and
52 provided, and against the peace and dignity of the people
of the state of California, said F. A. Miller being at said time and place the proprietor and manager of said Glenwood Hotel. That said petitioner, F. A. Miller, was duly arraigned and informed of the said complaint, and thereupon, to-wit, on May 26th, 1911, your petitioner did plead "not guilty" to the charge contained in said complaint, and thereupon on said day your petitioner was duly tried under the laws of the state of California, upon said complaint, before said Hon. Holton Webb, said Justice of the Peace of said Riverside township; and thereupon, to-wit, on said 26th day of May, 1911, your petitioner was duly convicted of said offense charged in said complaint and action; that such proceedings were thereupon taken, under and in accordance with the laws of the state of California, that an appeal was thereupon perfected from the decision and judgment of the said Holton Webb, a Justice of the Peace of said Riverside township, as aforesaid, to the Superior Court of Riverside county, state of California; that thereafter, to-wit, on the 31st day of May, 1911, after due and proper proceedings in accordance with the laws of the state of California had, your petitioner was duly tried by said Superior Court of Riverside county, after said appeal had been perfected and your petitioner duly arraigned and a plea of "not guilty" entered on behalf of petitioner, a trial by jury having been duly waived; and judgment was thereupon rendered by said Superior Court, to-wit, on June 10th, 1911, duly acquitting your petitioner of the offense charged in said complaint and action, and thereupon your petitioner was duly discharged by said Superior Court; that the sole ground on which said judgment of acquittal was made was that the statute, for the alleged violation of which your petitioner had been arrested and tried as aforesaid, and a copy of which statute is hereinafter set
forth, was unconstitutional and void, as held by said Su-
53 perior Court.

That thereafter, to-wit, on the 13th day of June, 1911, your petitioner, F. A. Miller, while attending to his duties, occupation and business as proprietor and manager of the said Glenwood Hotel, sometimes called Glenwood Mission Inn, at the said city of Riverside, county of Riverside, state of California, was again ar-

rested, imprisoned, restrained, detained and confined of his liberty by said sheriff of Riverside county, to-wit, F. P. Wilson, upon a certain charge against him for committing an alleged misdemeanor as is set forth in that certain complaint, a copy of which is as follows, to-wit:

"In the Justice's Court of Riverside Township, of the County of Riverside, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
F. A. MILLER, Defendant.

Complaint—Criminal.

F. P. Wilson, being duly sworn, on oath, says that the crime of a misdemeanor has been committed, and that the above named defendant F. A. Miller is guilty thereof: Committed as follows:

The said F. A. Miller, in Riverside Township, in the said County of Riverside, State of California, on the 12 day of June, A. D. 1911, being then and there the proprietor of the Glenwood Hotel in the City of Riverside, and the employer of females to work therein, did then and there employ one Emma Hunt a female person, to work therein as an employé in said hotel, and did then and there unlawfully employ, permit and require said Emma Hunt to work therein during said 12 day of June, 1911, to-wit: for the period of nine hours, contrary to the Statute in such case made and provided, and against the peace and dignity of the People of the State of California.

F. P. WILSON.

Subscribed and sworn to before me this 13 day of June, A. D. 1911.

HOLTON WEBB,
Justice of the Peace."

54 (Endorsement:) "No. —. Docket 9, Page 73. Justice's Court, Township of Riverside, County of Riverside. The People of the State of California against F. A. Miller. Complaint. Filed this 13 day of June, A. D. 1911. Holton Webb, Justice of the Peace."

That said complaint was made before said Hon. Holton Webb, Justice of the Peace of said Riverside township, in the county of Riverside, state of California, on the 13th day of June, 1911, by F. P. Wilson, and said complaint was regularly and duly sworn to in accordance with the law of the state of California by said F. P. Wilson as aforesaid, and thereupon, to-wit, on June 13th, 1911, said Justice of the Peace of said Riverside township issued a warrant of arrest in accordance with law, authorizing and instructing the said sheriff of Riverside county to arrest your petitioner for the

offense charged in said complaint; that it was in pursuance of the filing of said complaint and the issuance of said warrant of arrest and in conformity therewith that the said sheriff of Riverside county, said F. P. Wilson, did, to-wit, on said June 13th, 1911, arrest your petitioner; that the said imprisonment, detention, confinement and restraint were illegal, and the said illegality thereof consisted in this, to-wit, that the only pretense or cause of said arrest or detention was by virtue of the filing of said complaint and the warrant of arrest issued and served as aforesaid, said complaint charging that your petitioner, said F. A. Miller, did
55 on the 12th day of June, 1911, in said Riverside township, being then and there the proprietor of the said Glenwood Hotel in the said Riverside township, in said city of Riverside, and being as such proprietor the employer of females to work therein, then and there — employ one Emma Hunt, a female person, to work therein as an employee in said hotel, and did then and there unlawfully employ, permit and require said Emma Hunt to work therein during said 12th day of June, 1911, to-wit, for the period of nine hours, contrary to the statute in such case made and provided and against the peace and dignity of the people of the state of California.

That the violation of the law of the state of California alleged and charged in said last named complaint and action is the same in kind, to-wit, the employment of a female for more than eight hours a day, as was alleged and charged in the first named complaint and action, the statute of the state of California therein referred to being the same in each of said two cases, but the alleged act and employment referred to in said last named complaint and action is and was a different act and employment and a different alleged offense and misdemeanor from that alleged and charged in the said first named complaint and action, to-wit, that said last named complaint and action alleged and charged the employment of a female by your petitioner on a different day from that alleged and charged in the said former action.

Your petitioner alleges that the statute of the state of California referred to in each of said complaints and actions and the only statute or law which your petitioner was alleged or claimed in said complaints and actions or either of them to have violated was that certain statute of the state of California, approved by the governor of the state of California on March 22nd, 1911, after the same had been duly enacted by the people of the state of California represented in senate and assembly, which statute went into effect on May 22nd, 1911, and which statute, including its title, is in words and figures as follows:

56 "Chapter 238.

"An act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act.

"(Approved March 22, 1911.)

"The People of the State of California, represented in Senate and Assembly, do enact as follows:

"SECTION 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty eight hours during any one week; provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

"SEC. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

"SEC. 3. Any employer who shall require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction
57 thereof shall be fined for each offense not less than $50 nor more than $200, or imprisoned in the county jail not less than five nor more than thirty days, or both fined and imprisoned."

That thereupon your petitioner being still in the custody of said F. P. Wilson, sheriff of said county of Riverside, on said second arrest as aforesaid, did on the 14th day of June, 1911, file petition in this Honorable Supreme Court of the State of California for a writ of habeas corpus, in which petition your petitioner set forth the facts hereinbefore set forth, and all of them; that in said petition your petitioner further alleged and claimed that said statute of the state of California, for a violation of which your petitioner had been arrested and restrained of his liberty as aforesaid, was enacted by the legislature of the state of California and approved by the governor thereof in violation of the terms of the constitution of the state of California and of the constitution of the United States of America and that the same was therefore unconstitutional, null, void and of no effect; that in particular said statute was passed in violation of the terms of sections 22 and 25, subdivisions 2 and 33, of Article IV, of the Constitution of the State of California, and section 1 of Article I, of the Constitution of the State of California, and in further violation of the terms of the 14th amendment to the Constitution of the United States of America, and that your petitioner was accordingly restrained of his liberty as aforesaid contrary to the constitution of the state of California and to the constitution of the United States of America and amendments thereof.

That your petitioner in said petition and by the filing thereof sought to have it declared and determined by said Supreme Court of the state of California that said last named complaint upon which your petitioner was charged to have committed a misdemeanor as aforesaid, did not state a public offense in that
58 said alleged statute hereinbefore set forth was unconstitutional, null, void and of no effect and was in violation of the provisions of the constitution of the state of California and of the provisions of the 14th amendment of the constitution of the United States of America in that it was an attempt on the part of the state of California to make and enforce a law which by its effect necessarily abridges the privileges and immunities of a citizen of the United States and of the state of California in that it attempts to prohibit the employment of any female in a hotel within the state of California for more than eight hours a day or for more than 48 hours a week, the employment of a female employee for such purpose and for said period of more than eight hours a day and for more than 48 hours a week being a lawful occupation and protected by the provisions of the constitution of the state of California and said amendment of the constitution of the United States of America and being lawful both for the employer and employee; and in said petition and by the filing thereof petitioner sought to have it declared and determined by said Supreme Court of the state of California that said Statute hereinbefore set forth was unconstitutional, null, void and of no effect and was in violation of the provisions of the constitution of the state of California and of the provisions of the 14th amendment of the constitution of the United States of America in that it was an attempt on the part of the state of California to make and enforce a law which denied the equal

protection of the law and which by its terms was unequal, unfair, discriminatory and special in that it included in the operation of said Statute and in the inhibition therein contained large and substantial classes of women, especially that class of women employed in hotels, who perform services not more arduous and not different in kind or quality in any way from services performed by
59 various classes of working women either expressly or impliedly excepted from the inhibition of said Statute. And your petitioner prayed that a writ of habeas corpus might be granted directed to the said F. P. Wilson, sheriff of said county of Riverside, commanding him to have the body of your petitioner before the Supreme Court forthwith upon the granting of the writ therein prayed, and receive what should then and there be considered by said Supreme Court concerning your petitioner, together with the time and cause of his detention, and said writ, and that your petitioner should be restored to his liberty.

And such proceedings were had upon the filing of said petition and thereafter, that the said Supreme Court of the state of California ordered that a writ of habeas corpus should duly issue in said matter returnable before the said Supreme Court of California in Bank at San Francisco on the 3rd day of July, 1911, and thereafter, said hearing having been duly continued to July 10th, 1911, return was made and filed on the said 10th day of July, 1911, by the said F. P. Wilson, said sheriff of said county of Riverside, state of California, that he had the said petitioner, F. A. Miller, under his custody and under his power and restraint and that he detained the said F. A. Miller by virtue of the said warrant of arrest issued by the said Justice of the Peace of Riverside township as aforesaid, and that he held your petitioner in custody to await trial upon said charge as aforesaid, to-wit, upon said complaint that your petitioner had committed a misdemeanor, to-wit, a breach of said Statute hereinbefore set forth relating to the employment of women.

And your petitioner further shows that your petitioner did in said petition for a writ of habeas corpus brought by him for the purpose aforesaid, to-wit, to secure his liberty from which he was restrained and imprisoned under the alleged charge of violating the
60 said Statute hereinbefore set forth, claim and contend that said purported Statute so adopted by the legislature and approved by the governor of the state of California as aforesaid was, as to the rights of your petitioner, in the matter of his employing female employees in said Hotel of which he was then proprietor, for more than eight hours per day or more than 48 hours per week, and as to his alleged violation of said Statute and his arrest and detention for trial on said charge, invalid and unconstitutional because in violation of the provisions of the 14th amendment of the constitution of the United States prohibiting any state from making and enforcing any law abridging the privileges or immunities of any citizen of the United States or depriving any person of liberty or property without due process of law or denying them the equal protection of the law; and the validity of the said Statute of the

state of California passed on said March 22nd, 1911, and which went into effect on May 22nd, 1911, was drawn in question on the ground that it was repugnant to the provisions of the constitution of the United States aforesaid, to-wit, to the fourteenth Amendment to the Constitution of the United States, as well as to sections 22 and 25, subdivisions 2 and 33 of Article IV, and section 1 of Article I, all of the Constitution of the State of California. That said petition of habeas corpus was on the 10th day of July, 1911, heard in Bank by the said Supreme Court of the state of California and thereafter, to-wit, on July 18th, 1911, was submitted to the decision of the Honorable Justices of the said court, and afterwards, to-wit, on May 27th, 1912, an order was entered by said court upon said petition that said petition should be discharged and your petitioner remanded to the custody of the said F. P. Wilson, sheriff of said county of Riverside; and thereafter a petition for rehearing was filed in said court by your petitioner, to-wit, on the 15th day of June, 1912; and thereafter, said petition for rehearing
61 having been duly heard and considered by said Honorable Court, an order was thereupon entered, to-wit, on June 26th, 1912, denying said petition for rehearing, and thereafter the said judgment of the said Supreme Court discharging the said writ of habeas corpus and remanding your petitioner to the custody of the said F. P. Wilson, said sheriff of Riverside county, has become and now is final.

And your petitioner further shows that in said petition for a writ of habeas corpus brought by your petitioner, there has been a judgment in the highest court in the state of California in which a decision on the said petition could be had, and that by said decision there was drawn in question the validity of the said Statute of the state of California enacted by the legislature of the state of California and approved by the governor of the state of California, to-wit, on March 22nd, 1911, and taking effect on May 22nd, 1911, said Statute relating to the subject of the employment of women as aforesaid, upon the ground that said Statute was repugnant to the constitution of the United States and the fourteenth Amendment thereof, and the decision of said state court is in favor of the validity and constitutionality of said Statute.

And your petitioner alleges that by the said Statute of the state of California hereinbefore set forth, to-wit, said Statute of March 22nd, 1911, the rights secured to your petitioner by the constitution of the United States and the fourteenth Amendment thereof were impaired and that said Statute is unconstitutional in that it is contrary to and violates those provisions of the constitution of the United States and the fourteenth Amendment prohibiting the state from passing any law impairing the obligation of contracts, and those provisions prohibiting the state from making and enforcing any law abridging the privileges or immunities of any citizen of the United States, or depriving any person of liberty or property without due process of law, or denying to any
62 person within its jurisdiction the equal protection of the laws.

And the Supreme Court of the state of California did err in deciding in favor of the constitutionality and validity of the said Statute of the state of California, to-wit, said Statute of March 22nd, 1911, and in not deciding that said Statute was void and unconstitutional as being in violation of the constitution of the United States and the amendments thereof as aforesaid.

That your petitioner is now in *the* custody and restrained of his liberty under said warrant of arrest as aforesaid, being detained and restrained of his liberty and held for trial by said F. P. Wilson, sheriff of said Riverside county, upon said complaint and warrant of arrest hereinbefore set forth, to-wit, that complaint filed and that warrant of arrest issued by said Riverside Township Court, to-wit, on June 13th, 1911; that at all times herein mentioned your petitioner has been a citizen of the United States.

Wherefore your petitioner prays that a writ of error presented herewith from the Supreme Court of the United States of America to the Supreme Court of the state of California be allowed, and such other process as will enable your petitioner to obtain a review of the said petition for a writ of habeas corpus wherein your petitioner is petitioner and the said F. P. Wilson, said sheriff of Riverside county, is respondent, and for the correction of the error aforesaid, committed by the said Supreme Court of the state of California; and for such other and further orders as may be proper therein and herein.

And for as much as by the complaint and warrant of arrest of the said Township Court of Riverside Township and of the commitment therein by which your petitioner is restrained and detained by the said F. P. Wilson, as sheriff of said Riverside county, and to whose custody your petitioner is remanded by the order of
the Supreme Court of the state of California if said peti-
63 tioner shall be tried and convicted by said Township Court of Riverside county and fined or imprisoned or both in accordance with the terms of said Statute your petitioner cannot have a hearing upon the writ of error herein before the Supreme Court of the United States until said fine shall have been satisfied or said imprisonment shall have been suffered, your petitioner prays that upon allowing of the writ of error herein your petitioner be enlarged upon recognizance, and your petitioner will ever pray, etc.

FLINT, GRAY & BARKER,
Attorneys for Petitioner, F. A. Miller.

64 [Endorsed:] Copy. Crim., No. 1686. United States of America. Petition for Writ of Error. In the Supreme Court of the State of California. In the Matter of the Application of F. A. Miller for Writ of Habeas Corpus. Filed Jan. 20, 1913. B. Grant Taylor, Clerk, by Erb, Deputy. Flint, Gray & Barker, Attorneys-at-Law, Equitable Bank Bldg., First and Spring Sts., Los Angeles, Cal. Telephones: Home 10601, Sunset Main 685.

65 Copy.

UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

Crim. No. 1686.

In the Matter of the Application of F. A. MILLER for a Writ of Habeas Corpus.

Assignment of Errors.

F. A. Miller, having petitioned the Honorable Chief Justice of the State of California for an order permitting him to present a writ of error to the Honorable the Supreme Court of the United States from the final judgment made and entered in said cause by the Supreme Court of the State of California, now makes and presents and files the following assignment of errors herein and says that in the record and proceedings in the above entitled matter there is manifest error in this, to-wit:—

I.

By the record herein it appears that the Supreme Court of the State of California erred in deciding that the Statute passed by the people of the state of California, and approved by the governor of the state of California on March 22nd, 1911, thereafter taking effect on May 22nd, 1911, said Statute being entitled,

"An Act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female to provide suitable seats for all female employees and to permit them to use such seats when they are not en-
66 gaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act."

was a valid and constitutional statute and binding upon this defendant.

II.

By the record herein it appears that the Supreme Court of the State of California erred in deciding that the Statute specifically referred to in paragraph I hereof was not in violation of the constitution of the United States and in violation of that part of the fourteenth

Amendment of the constitution of the United States which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

III.

By the record herein it appears that the Supreme Court of the State of California erred in deciding that the Statute specifically referred to in paragraph I hereof was not in violation of the constitution of the United States and in violation of that part of the fourteenth Amendment of the constitution of the United States which provides that no state shall deprive any person of liberty or property without due process of law.

IV.

By the record herein it appears that the Supreme Court of the State of California erred in deciding that the Statute specifically referred to in paragraph I hereof was not in violation of the constitution of the United States and in violation of that part of the fourteenth Amendment of the constitution of the United States which provides that no state shall pass any law denying to any per-
67 son within its jurisdiction the equal protection of the laws.

V.

By the record herein it appears that the Supreme Court of the State of California erred in holding that the complaint upon which petitioner was charged with an offense and thereafter arrested and held for trial thereon stated facts constituting a public offense under the laws of the state of California.

VI.

By the record herein it appears that the Supreme Court of the State of California erred in holding that the sheriff of Riverside county was entitled by law to arrest, detain and restrain your petitioner of his liberty under the warrant of arrest issued upon the basis of the filing of said complaint.

VII.

By the record herein it appears that the Supreme Court of the State of California erred in not discharging the said F. A. Miller, petitioner and plaintiff in error, upon the return of the writ of habeas corpus herein and upon its final decision in said matter.

VIII.

By the record herein it appears that the Supreme Court of the State of California erred in discharging the said writ of habeas corpus upon the return thereof herein and in remanding the said petitioner, plaintiff in error, to the custody of said F. P. Wilson, sheriff of Riverside county.

By the record aforesaid it appears that the judgment of the Supreme Court aforesaid was given against the said plaintiff in error, your petitioner herein, and did discharge the said writ of habeas corpus and remand the said F. A. Miller, plaintiff in error, to the custody of the said F. P. Wilson, sheriff of said River-
68 side county, defendant in error, whereas, by the law of the land and the constitution of the United States and the amendments thereof the said judgment of the Supreme Court of the State of California ought to have discharged the said F. A. Miller, plaintiff in error, from custody and restored him to his liberty, and the said decision ought to have been against the validity and constitutionality of said Statute of the state of California enacted by said state of California as aforesaid on March 22nd, 1911, and taking effect on May 22nd, 1911, as aforesaid. And accordingly said Supreme Court of the State of California therefore erred in not deciding that the warrant of arrest under the authority of which said sheriff of Riverside county did arrest and restrain of his liberty and does now restrain of his liberty your petitioner herein, said plaintiff in error, was invalid and without legal sanction or any legality whatever and that therefore the arrest thereunder as aforesaid was null, void and of no effect;

And the said plaintiff in error, petitioner herein, therefore prays that the judgment and decision of the Supreme Court of the State of California may be reversed, and annulled and altogether held for naught, and that the said Supreme Court of the State of California may be ordered to enter an order directing the discharge of said F. A. Miller, plaintiff in error, from custody, and that said plaintiff in error may have such other relief as he may be entitled to.

FLINT, GRAY & BARKER,
Attorneys for F. A. Miller, Plaintiff in Error.

69 [Endorsed:] Copy. Crim. No. 1686. United States of America: Assignment of Errors. In the Supreme Court of the State of California. In the Matter of the Application of F. A. Miller for a Writ of Habeas Corpus. Assignment of Errors. Filed Jan. 20, 1913. B. Grant Taylor, Clerk. By Erb, Deputy. Flint, Gray & Barker, Attorneys-at-Law, Equitable Bank Bldg., First and Spring Sts., Los Angeles, Cal. Telephones: Home 10601, Sunset Main 685.

70 Copy.

In the Supreme Court of the State of California.

Crim. No. 1686.

In the Matter of the Petition of F. A. MILLER for a Writ of Habeas Corpus, Petitioner and Plaintiff in Error.

Order Allowing Writ of Error.

Upon motion of Flint, Gray and Barker, attorneys for petitioner, F. A. Miller, and upon filing a petition for a writ of error and an assignment of errors,

It is ordered that a writ of error be and hereby is, allowed to have reviewed in the United States Supreme Court the judgment heretofore entered herein, and that the amount of said bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500.00),

And good cause having been shown, it is ordered that said petitioner be enlarged upon recognizance in the sum of one hundred dollars ($100.00) pending the hearing and determination of said writ of error.

Dated this 9th day of Dec'r, 1912.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

71 Copy. Crim. No. 1686. In the Supreme Court of the State of California. In the Matter of the Petition of F. A. Miller for a Writ of Habeas Corpus, Petitioner and Plaintiff in Error. Order allowing writ of error. Filed Jan. 22, 1913. B. Grant Taylor, Clerk, by Erb, Deputy. Flint, Gray & Barber, Attorneys-at-Law, Equitable Bank Bldg., First and Spring Sts., Los Angeles, Cal. Telephones: Home 10601, Sunset Main 685.

72 Original.

UNITED STATES OF AMERICA, *ss:*

Crim. No. 1686.

The President of the United States to the Honorable Justices of the Supreme Court of the State of California, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California before you or some of you, being the highest court of law and equity of the said State, in which a decision could be had in that certain matter of the petition of F. A. Miller for a

writ of habeas corpus, petitioner and plaintiff in error, and F. Wilson, sheriff of the county of Riverside, respondent thereto a defendant in error, wherein was drawn in question the validity a statute or an authority exercised under said state, to-wit: a statu of the state of California, on the ground of its being repugnant the constitution, treaties and laws of the United States, and the d cision was in favor of such its validity; or wherein was drawn question the construction of a clause of the constitution, and i amendments, or of a treaty, or a statute of, or commission held und the United States, and the decision was against the title, righ privilege, or exemption specially set up or claimed under such clau of the said constitution, treaty, statute, or commission; a manife error hath happened to the great damage of the said F. A. Mille as by his complaint appears. We being willing that error, if an hath been, should be duly corrected, and full and speedy justice do to the parties aforesaid in this behalf, do command you, if judgmer be therein given, that then under your seal, distinctly an

73 openly, you send the record and proceedings aforesaid, wit all things concerning the same, to the Supreme Court of th United States, together with this writ, so that you have the same Washington, on the 21st day of February next, in the said Suprem Court, to be then and there held, that the record and proceeding aforesaid being inspected, the said Supreme Court may cause furthe to be done therein to correct that error, what of right, and accordin to the laws and customs of the United States, should be done.

Witness, the Honorable Edward Douglass White, Chief Justice o the Supreme Court of the United States, thi 23rd day of December A. D. 1912.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk United States District Court,
Northern District of California.

Allowed by

W. H. BEATTY,
Chief Justice of the Supreme Court
of the State of California.

74 [Endorsed:] Original. Crim. No. 1686. United States o America, ss. To the President of the United States, to th Honorable Justices of the Supreme Court of the State of California Writ of Error. Filed Jan. 22, 1913. B. Grant Taylor, Clerk, by Erb, Deputy. Flint, Gray & Barker, Attorneys-at-Law, Equitable Bank Bldg., First and Spring Sts., Los Angeles, Cal. Telephones Home 10601, Sunset Main 685.

75 UNITED STATES OF AMERICA, *ss:*

To F. P. Wilson, Sheriff of the County of Riverside, State of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 21st day of February, A. D. 1913, pursuant to a Writ of Error, filed in the clerk's office of the Supreme Court of the State of California, wherein F. A. Miller is petitioner and plaintiff in error, and you are Defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Beatty, Chief Justice of the Supreme Court of the State of California, this 23rd day of December, A. D. 1912, and of the Independence of the United States, the one hundred and thirty-seventh.

[Seal Supreme Court of California.]

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

76 [Endorsed:] In the Supreme Court of the United States. —— —— vs. ——. Citation. Filed Jan. 22, 1913. B. Grant Taylor, Clerk. By Erb, Deputy.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Clyde E. Cate being first duly sworn, deposes and says:

That he is and was at all times herein mentioned a citizen of the United States over the age of twenty-one years and not a party to the within proceeding; that he personally served the within Citation on F. P. Wilson, Sheriff of Riverside County, California, by delivering to and leaving with said F. P. Wilson, Sheriff, a true copy of the within Citation on the 28th day of December, 1912, at the city of Riverside, County of Riverside, State of California.

CLYDE E. CATE.

Subscribed and sworn to before me this 21st day of January, 1913.

[Seal Daisy Roberts, Notary Public, Los Angeles Co., Cal.]

DAISY ROBERTS,
Notary Public in and for the County of Los Angeles, State of California.

Service of within Citation, by copy, admitted this 28th day of December A. D. 1912.

F. P. WILSON,
LYMAN EVANS,
Attorney for F. P. Wilson.

77 Copy.

In the Supreme Court of the State of California.

Crim. No. 1686.

In the Matter of the Application of F. A. MILLER, Petitioner, for Writ of Habeas Corpus, Plaintiff in Error.

Bond on Application for a Writ of Error.

Know all men by these presents, that we, F. A. Miller as principal, and the Pacific Coast Casualty Company, of California, a corporation organized under the laws of the state of California, with authority under the laws of the state of California to execute bonds are held and firmly bound unto F. P. Wilson, sheriff of the county of Riverside, and to his successor in office, respondent, in the full and just sum of Five hundred 00/100 dollars ($500.00) to be paid to the said F. P. Wilson, respondent and defendant in error, his successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 4th day of January, 1913.

Whereas lately at a session of the Supreme Court of the State of California in the suit or proceeding pending in said Court wherein the said F. A. Miller was a petitioner for a writ of habeas corpus, a final judgment was rendered therein discharging the said writ and remanding the said F. A. Miller to the custody of the said F. P. Wilson, sheriff of the county of Riverside, and the said F. A. Miller having obtained from the said Court a writ of error to reverse the judgment in the aforesaid matter, and a citation directed to the

78 said defendant, the said F. P. Wilson, sheriff of the county having been

H. D. V. L. B., Notary Public.

of Riverside, [is about to be]* issued, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington in the District of Columbia;

Now the condition of the above obligation is such that if the said F. A. Miller shall prosecute his writ of error to effect and shall answer all damages and costs that may be awarded against him, if he fails to make good his plea, then the above obligation to be void otherwise to remain in full force and effect.

F. A. MILLER.
PACIFIC COAST CASUALTY COMPANY.
By HARRY D. VANDEVEER. [SEAL.]
Attorney in Fact.

[* Words in brackets erased in copy.]

The foregoing and within bond is hereby approved, this 15th day of January, 1913.

F. W. HENSHAW,
Acting Chief Justice of the Supreme Court of the State of California.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 4th day of January in the year one thousand nine hundred and thirteen, before me, Leona Blum, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Harry D. Vandeveer, known to me to be the duly authorized Attorney-in-fact of the Pacific Coast Casualty Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company, and the said Harry D. Vandeveer, duly acknowledged to me that he subscribed the name of the Pacific Coast Casualty Company thereto as Principal and his own name as Attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[SEAL.] LEONA BLUM,
Notary Public in and for Los Angeles County, State of California.

79 [Endorsed:] Copy. Crim. No. 1686. In the Supreme Court of the State of California. In the Matter of the Application of F. A. Miller, Petitioner, for a Writ of Habeas Corpus. Plaintiff in Error. Bond on application for a writ of error. Filed Jan. 22, 1913. B. Grant Taylor, Clerk. By Erb, Deputy. Flint Gray & Barker, Attorneys-at-Law, Equitable Bank Bldg., First and Spring Sts., Los Angeles, Cal. Telephones: Home 10601, Sunset Main 685.

80 In the Supreme Court of the State of California.

Crim. No. 1686.

In the Matter of the Application of F. A. MILLER for a Writ of Habeas Corpus.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding and annexed are true and correct copies of Petition for Writ of Habeas Corpus and Order Granting Writ, Answer to Return of Sheriff, etc., Acknowledgment of Service of Lyman Evans, District Attorney of the County of Riverside, Minute Order of May 27, 1912, remanding Petitioner to the custody of the Sheriff of Riverside County, Return of F. P. Wilson, Sheriff of Riverside County, Warrant of Arrest and Writ, Minute Order of July 10, 1911, granting Wm. Denman, Esq., permission to

appear as Amicus Curiæ, and Minute Order of attorneys presenting Argument, Minute Order of July 18, 1911, submitting Cause of that date, Certificate of Final Judgment, Petition for Writ of Error, Assignment of Errors, Order Allowing Writ, Original Writ, Original Citation, and copy of Bond on Application for Writ of Error, in the above entitled cause, as shown by the records of my office.

Witness my hand and the Seal of the Court, this 23rd day of January, A. D. 1913.

[Seal Supreme Court of California.]

B. GRANT TAYLOR, *Clerk*,
By I. ERB, *Deputy Clerk*.

Endorsed on cover: File No. 23,541. California Supreme Court. Term No. 966. F. A. Miller, plaintiff in error, vs. F. P. Wilson, sheriff of the County of Riverside, State of California. Filed February 10th, 1913. File No. 23,541.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914

No. 362

WILLIAM B. BOSLEY, PETER L. WHEELER, AND SAMUEL H. BUTEAU, TRUSTEES OF "THE SAMUEL MERRITT HOSPITAL," AND ETHEL E. NELSON, APPELLANTS,

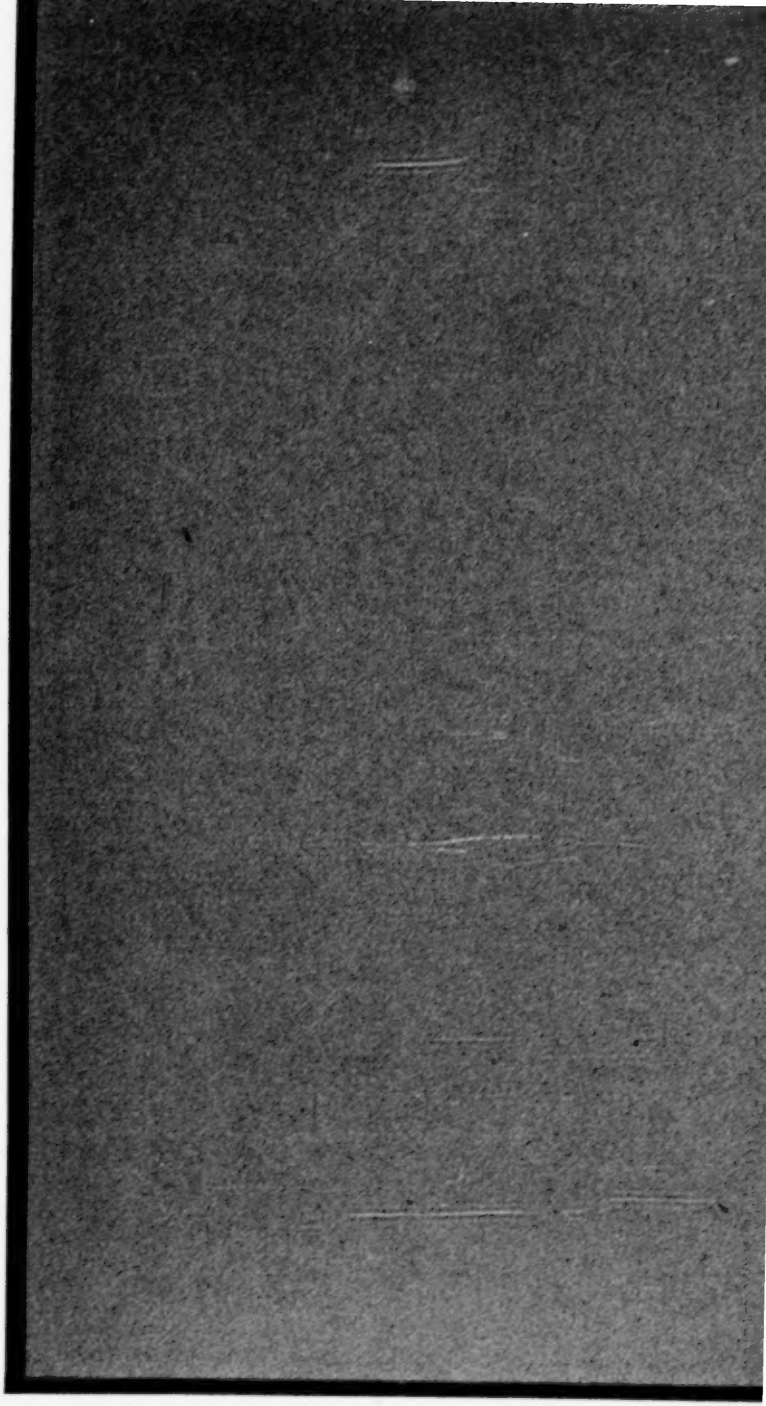
vs.

JOHN P. McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED FEBRUARY 16, 1914.

(24,055)



(24,055)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 904.

WILLIAM B. BOSLEY, PETER L. WHEELER, AND SAMUEL H. BUTEAU, TRUSTEES OF "THE SAMUEL MERRITT HOSPITAL," AND ETHEL E. NELSON, APPELLANTS,

vs.

JOHN P. McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print
Bill of complaint	1	1
Subpœna and return	20	12
Alias subpœna and return	23	14
Order to show cause	25	15
Marshal's return	26	16
Order denying application for interlocutory injunction and dismissing order to show cause	28	17
Petition for appeal	29	18
Allowance of appeal	30	18
Assignment of errors	31	19
Bond on appeal	33	20
Præcipe for record	36	22
Clerk's certificate	38	23
Citation and service	39	23

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 18, 1914.

1 In the United States District Court for the Northern District of California, Second Division.

No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. McLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Bill in Equity for an Injunction.

To the Judges of the District Court of the United States for the Northern District of California:

William B. Bosley, a citizen of the United States and of the State of California, residing in the City and County of San Francisco, in said State; Samuel H. Buteau, Peter L. Wheeler and Ethel E. Nelson, also citizens of the United States and of the State of California, residing in the County of Alameda, in said State, bring this action against John P. McLaughlin a citizen of the State of California, residing in the City and County of San Francisco; John Kean, a citizen of the State of California, residing in the City and
2 County of San Francisco, John J. Tobin, a Citizen of the State of California, residing in the City of Los Angeles, County of Los Angeles, and W. H. L. Hynes, a citizen of the State of California, residing at the County of Alameda, in said State, and complaining say:

That John P. McLaughlin is the duly appointed, qualified and acting Commissioner of Labor of the State of California, and the person mentioned, as such Commissioner, in Section three of the Act of the Legislature of the State of California, hereinafter set forth, approved June 12, 1913, as one of the persons charged with the enforcement of said law;

That John Kean is a duly appointed, qualified and acting Deputy Labor Commissioner of the State of California, and one of the persons mentioned, as such Commissioner, in said Section three of said Act of the Legislature of the State of California, approved June 12, 1913, charged with the enforcement of said law;

That John J. Tobin is a duly appointed, qualified and acting Deputy Labor Commissioner of the State of California, and one of the persons mentioned, as such Commissioner, in said Section three

of said Act of the Legislature of the State of California, approved June 12, 1913, charged with the enforcement of said law.

That John P. McLaughlin, John Kean and John J. Tobin, constitute and compose the Bureau of Labor Statistics mentioned in Subdivision 3 of the Act of the Legislature of the State of California, approved June 12, 1913, and charged with the enforcement of said Act.

That W. H. L. Hynes is the duly elected qualified and acting District Attorney of the County of Alameda, State of California,
3 and is charged, by virtue of his said office, with the enforcement in said County of the laws of the State of California.

That under and by virtue of a certain instrument, dated the 21st day of April, 1891, Catherine M. Garcelon conveyed to certain Trustees therein named, and to their successors certain real and personal property, to be by them held as Trustees of The Samuel Merritt Hospital.

That under the terms and provisions of said instrument creating said trust, the said Trustees are required to found, establish, and erect a hospital in the County of Alameda, State of California, and said Trustees are further required by the terms of said trust instrument to maintain said hospital and to care for, nurse treat and otherwise aid, free of all charge for such care, nursing, treatment, and aid, as many deserving poor persons suffering from injury or afflicted with any curable, non-contagious disease, as the income from the fund provided therefor will permit, after first deducting a five per cent reserve for maintenance and additional improvements.

That in and by the provisions of said instrument, said Trustees are required to care for, nurse, treat and otherwise aid, free of all charge for such care, nursing, treatment and aid, not less than twenty (20) deserving poor persons suffering from injury, or afflicted with any curable, non-contagious disease.

That in and by the provisions of said instrument, it is further declared that at said hospital so to be founded, erected and maintained, there might be treated persons suffering from injury, or afflicted with any curable, non-contagious disease, from whom compensation for such treatment might be collected and received, but said instrument creating said trust further provided that the number of per-
4 sons from whom compensation might be collected and received, should, under no circumstances, exceed the number of deserving poor persons being cared for, nursed, treated, and otherwise aided free of cost and expense.

That in and by the provisions of said instrument, it is further declared that any income or revenue derived from the care and treatment of those persons from whom compensation for such care and treatment might be collected and received, should be applied and devoted to the care, nursing, treatment and aid, free of cost and expense, of as many additional deserving poor persons suffering from injury or afflicted with any curable, non-contagious disease as the income or revenue so derived would be sufficient to provide for.

That, pursuant to the provisions of said instrument, the Trustees therein named, and their successors in trust, proceeded to, and did

found and establish The Samuel Merritt Hospital in the City of Oakland, County of Alameda, State of California, and proceeded to and did erect the said hospital buildings, and have maintained and do now maintain the said hospital pursuant to the provisions of the said trust instrument.

That your petitioners William B. Bosley, Peter L. Wheeler, and Samuel H. Buteau now are the Trustees of the trust above set forth and declared, and, as such Trustees, there is vested in them the title to certain real property, which, together with the hospital buildings situate thereon, is of the value of over $150,000. That there is also vested in said Trustees certain other property of the value of $500,000, from which property last referred to there is derived a fund for the care, nursing, and treatment, at said hospital, of deserving poor persons suffering from injury or afflicted with any curable, non-contagious disease, and for the maintenance of the said hospital.

That there are now maintained in the said hospital forty (40) beds, where deserving poor persons, to that number, suffering from injury or afflicted with any curable, non-contagious disease, may receive care, nursing, and treatment free of all cost and expense to them, and that there are also now maintained in said hospital forty (40) beds, where persons suffering from injury or afflicted with any curable, non-contagious disease, may be cared for, nursed, and treated, and from whom compensation therefor may be collected and received.

II.

That in and by an Act of the Legislature of the State of California, approved June 12, 1913, entitled "An Act to amend an Act entitled 'An Act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female, to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect, or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or any other agent of any such employer to violate the provisions of this act,' approved March 22, 1911," it is provided as follows:

"The People of the State of California do enact as follows:

"SECTION 1. An Act entitled 'An Act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female, to

provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act,' approved March 22, 1911, is hereby amended to read as follows:

"SECTION 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging house, apartment house, hospital, place of amusement, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty four hours of one day, or forty-eight hours during any one week; provided, however, that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, nor to graduate nurses in hospitals.

"SEC. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all females employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

"SEC. 3. The bureau of labor statistics shall enforce the provisions of this act. The commissioner, his deputies and agents, shall have all powers and authority of sheriffs or other peace officers, to make arrests for violations of the provisions of this act, and to serve all processes and notices thereunder throughout the state.

"SEC. 4. Any employer who shall permit or require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for a first offense, by a fine of not less than twenty five dollars nor more than fifty dollars; for a second offense, by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars; or by imprisonment for not more than sixty days, or by both such fine and imprisonment. All fines imposed and collected under the provisions of this act shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics."

7 That the defendants named herein, and each of them, are charged with the duty of enforcing the provisions of the Act hereinabove set forth.

III.

That in the conduct, maintenance, and operation of the various departments of The Samuel Merritt Hospital there are employed approximately eighty (80) females and eighteen (18) males; that of said females so employed, ten (10) are employed to care for, nurse, and aid the patients at said hospital, and said ten (10) females so employed are what are known as Graduate Nurses, that is to say, said ten (10) females have pursued and completed, at some training school for nurses in a hospital, courses of study and training in the profession or occupation of nursing and attending the sick and injured, and have received, in recognition thereof, diplomas or certificates of graduation from said courses of study; that because of their qualifications, said graduate nurses are paid a compensation greatly in excess of that paid to female pupils engaged in nursing in hospitals while students of the training school for nurses in hospitals.

That in addition to said ten (10) females so engaged and employed in said hospital, and known as graduate nurses, there are employed at said hospital one female as bookkeeper, whose duties consist of keeping the books of account of said hospital, two females performing the usual duties of office assistants, one female whose occupation is that of seamstress, one female whose occupation is that of matron or housekeeper, five females engaged in the performance of ordinary household service, and one female, viz: your petitioner,
8 Ethel E. Nelson, whose principal occupation in said hospital is that of pharmacist, and who is also employed as storekeeper in said hospital.

That the said Ethel E. Nelson is a graduate and licensed pharmacist, being a graduate of the Department of Pharmacy of the University of California of the class of 1904, and thereafter licensed by the State Board of Pharmacy of California to pursue the profession of pharmacy in the State of California, and that your petitioner, Ethel E. Nelson, is entitled to pursue said profession in said State.

That the duties of the said Ethel E. Nelson consist in caring for the contents of the store room in said hospital, and that her duties as such store-keeper occupy her time during the period from eight o'colck A. M. to twelve noon of each day; but that the paramount occupation and chief duty of said Ethel E. Nelson in said hospital is in the capacity of pharmacist, and this occupation involves the mixing and compounding of drugs for use and application in said hospital in the treatment of its patients, and that the character of the work conducted in said hospital, that is to say, the care and treatment of sick and injured persons, requires that the said Ethel E. Nelson as a pharmacist in said hospital, it sometimes happens that and compounding drugs for the treatment of sick and injured persons in said hospital, as and when the same are required; that, in consequence of the exigencies of the occupation of said Ethel E. Nelson as a pharmacist in said hospital, it sometimes happens that she is required to continue in the performance of her labor for a

greater period than eight hours on some days, and for a greater period than forty-eight hours in some weeks.

That the work done and performed in said hospital by the said Ethel E. Nelson, and that done and performed in said hospital by the said matron or housekeeper, and the work done and performed in said hospital by the said seamstress, and the work done and performed in said hospital by the said book-keeper, office assistants, and household servants, except that all of the said work is done and performed in a hospital, and at the direction and under the control of the administrative department thereof, differs in no manner or respect from the work done and performed by persons engaged in similar employments or occupations and not employed in hospitals.

That your petitioner, Ethel E. Nelson, receives a salary of seventy-five ($75.00) dollars per month, together with board, lodging, and laundry, as compensation for the services rendered by her to the said hospital as such pharmacist and store-keeper.

That your petitioner, Ethel E. Nelson, is desirous of remaining and continuing in the employ of the said hospital in the occupations in which she is now therein engaged, but that in the event that the relief herein prayed for is denied, the Trustees of The Samuel Merritt Hospital will discharge the said Ethel E. Nelson from its employ, and your petitioners are informed and believe, and upon such information and belief aver, that the said Ethel E. Nelson will be unable thereafter to find and procure employment in any other hospital in the State of California in the practice of her profession of pharmacy.

That if the Act of the Legislature of the State of California, hereinabove set forth, be held or declared to be valid, or if the provisions of the said Act be enforced by the officers of the State of California charged with the enforcement thereof, the employment of female pharmacists in hospitals in the State of California will become impracticable, and that as a result of the enforcement, or the attempted enforcement, of the said Act hereinabove set forth, your petitioner, Ethel E. Nelson, will suffer loss or damage in excess of the sum of three thousand ($3,000.00) dollars.

That in the event that said Act of the Legislature of the State of California is held or declared to be valid, or its provisions enforced, or attempted to be enforced, by the defendants herein, the right of the said Ethel E. Nelson freely and voluntarily to contract as to her hours of labor as a pharmacist in said hospital will be abridged and impaired, and as a result thereof the said Ethel E. Nelson will suffer loss or damage in excess of the sum of three thousand ($3,000.00) dollars.

That in The Samuel Merritt Hospital, and as a part thereof, there is established, operated and maintained a school wherein females pursue a course of study and training to nurse the sick and injured; that a three year course of study and training is therein provided, upon the satisfactory completion whereof, diplomas or certificates of graduation are issued; that in the third year class of said school, twenty four females are enrolled; that in the second year class of

said school, eighteen females are enrolled; that in the first year class of said school, twenty-three females are enrolled; that a part of the education and training of said pupil or student nurses consists in aiding, nursing, and attending to the wants of the sick and injured persons in said hospital; that the work done and performed by said pupil or student nurses, while engaged in pursuing the prescribed course of study and training, in aiding, nursing, and attending to the wants of the sick and injured persons in said hospital, is of value to said hospital, and in consideration thereof said pupil or student nurses are each paid the sum of ten dollars per month during each of the first two years of said course, and twelve dollars and fifty cents per month during the third year of said course,
11 and, in addition thereto, are furnished and provided, throughout the three years, with free board, lodging, and laundry.

That the cost to said hospital of maintaining said school for the education and training of female nurses is the sum of twenty five hundred dollars ($2,500.00) per month, but that the cost of procuring to be performed, by graduate nurses, the work now performed in said hospital by said pupil or student nurses, would be the sum of not less than thirty-six hundred dollars ($3,600.00) per month; that the cost to said hospital of procuring to be done and performed, by females neither pupils in the said school nor graduate nurses, the work now done and performed by said pupil or student nurses, would be the sum of three thousand ($3,000.00) dollars per month.

That the respective costs of labor, as hereinabove stated, are estimated on the basis that the hours of labor for said respective classes of females are not regulated or restricted by law.

That the reason why the work done and performed in said hospital by said pupil or student nurses can be done for less expense when performed by them, is due to the fact that the compensation of said pupils or students in said school is paid for not only in money, board, lodging, and laundry, but also in the education and training they receive from the physicians and surgeons employed in and about said hospital, and by the fact that the labor performed by them in aiding, nursing, and attending the wants of the sick and injured persons in said hospital, is of itself educational in character, and a necessary and indispensable part of their education and training.

That the character of the occupation in which said pupil or student nurses are engaged, viz: that of caring for, nursing and treating the sick and injured, is such that their hours of labor
12 must be largely determined by the exigencies of the cases upon which they are attending.

That in the event that the hours of labor of said pupil or student nurses are limited, or the law purporting to limit their hours of labor to eight hours in one day and forty-eight hours in one week is enforced, or attempted to be enforced, by the defendants herein, it will be necessary for The Samuel Merritt Hospital either to cease the conduct and operation of said school for the education and training of nurses, or to increase by at least fifty per cent, the number of

females attending said school, in order that an equal return in labor and service to that rendered by said pupil or student nurses without restriction of law can be made and given to said hospital.

That in the event that the number of females attending said school is increased fifty per cent., the cost and expense to said hospital of maintaining said school will likewise increase fifty per cent., and an expense or more than twelve hundred fifty ($1,250.00) dollars per month will thereby be added to the present cost and expense of maintaining and operating said school and hospital; that in the event that the conduct and operation of said school is abandoned, a loss to said hospital of more than one thousand dollars ($1,000.00) per month will be incurred.

That if the act of the Legislature of the State of California, hereinabove set forth, be held to be valid, or if the defendants herein enforce, or attempt to enforce, the provisions thereof, and the relief herein prayed be not granted, an additional expense to said hospital of more than one thousand dollars ($1,000.00) per month will be incurred.

That the value of the right which the Trustees of said hospital seek to protect by this Bill, viz: the right of freedom of contract, exceeds the sum of three thousand ($3,000.00) dollars.

13 That your petitioners are informed and believe, and upon such information and belief aver, that, unless restrained by this Honorable Court, the defendants herein will enforce, or attempt to enforce, the provisions of the Act of the Legislature hereinabove set forth, and that as a result thereof it will become necessary for the Trustees of the said hospital to decrease the number of deserving poor persons that may be cared for, nursed and treated at said hospital free of cost, by at least ten (10) persons, and that, accordingly under the terms and provisions of the trust instrument hereinabove referred to establishing said hospital, it will be incumbent upon the Trustees of said hospital to decrease the number of sick or injured persons who may be cared for, nursed and treated at said hospital, and from whom compensation may be collected and received therefor, so that the number of persons receiving care, nursing, and treatment at said hospital, and from whom compensation is received therefor, shall not exceed the number of deserving poor persons receiving, gratuitously, care, nursing and treatment at said hospital, and, as a necessary result thereof, there will be a corresponding decrease in the revenue now received from persons cared for, nursed and treated, and from whom compensation may be collected and received, and which said revenue, when so received, has been and is now applied towards the care, nursing and treatment of as many other and additional deserving poor sick or injured persons as the revenue so received will permit.

That the Trustees of The Samuel Merritt Hospital desire, as Trustees of a charitable trust, to perform their duties thereunder to the best of their ability, but said Trustees will, unless the defendants herein are restrained by this Honorable Court from enforcing or attempting to enforce the provisions of the Act of the Legislature

hereinabove set forth, be subjected to repeated arrests and
14 prosecutions, merely because of the attempt by said Trustees to execute said trust in the manner in which said Trustees believe said trust should be executed.

That an attempted enforcement of said Act of the Legislature, if the same be invalid and unconstitutional, will operate to destroy and abolish said school for the education and training of nurses now maintained by and at said hospital, and will cause a loss to said hospital of more than three thousand ($3,000.00) dollars.

That your petitioners are informed and believe, and upon such information and belief aver, that the said Act of the Legislature of the State of California, hereinabove set forth, is contrary to and violative of the provisions of the Fourteenth Amendment to the Constitution of the United States, in each of the following particulars:

1. That said Act deprives your petitioners of the right of freedom of contract guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

2. That said Act denies to your petitioners, and to each of them, the equal protection of the laws guaranteed by said Fourteenth Amendment to the Constitution of the United States.

3. That said Act operates to deny to these petitioners, and to each of them, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, in this, that the said Act is based upon a classification which bears no just or proper relation to the object of the law, and is a mere arbitrary selection.

That the fact that labor is performed by females in hospitals does not, of itself, afford a basis of classification; that, as a matter of fact,
15 there is no difference whatever between labor performed in hospitals and the same kind of labor performed elsewhere; that a hospital is not an unhealthful or unsanitary place for the performance of labor, but, on the contrary, the health of those performing labor in hospitals is better *self*-guarded than is generally the case with the health of those performing labor elsewhere, and that a properly conducted hospital for the treatment of injuries and non-contagious diseases is one of the most sanitary and healthful places in which labor may be performed.

That there is no just or reasonable ground for exempting from the operation of said Act females engaged in harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, and graduate nurses in hospitals, and by the provisions of said Act to limit the hours of labor of other females therein denominated or classified, including all females employed in hospitals not graduate nurses; that by the exemption of graduate nurses and of females employed in harvesting, curing, canning or drying any variety of perishable fruit or vegetable, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States is denied to your petitioner, Ethel E. Nelson.

That said Act of the Legislature of the State of California is contrary to, and violative of, the provisions of the Fourteenth Amendment to the Constitution of the United States, and denies to your

petitioners the equal protection of the laws, in this, that in and
the said Act the sole penalty imposed for a violation of its provisio
is imposed upon the owners or proprietors of a hospital or of t
other places wherein the hours of labor of females are restricted, a
no penalty whatsoever is imposed upon the person performing lab
more than eight hours in one day, even though such labor be volu
tarily performed, and not at the request or instance of the own
or proprietor of the place wherein such labor is performed.

16 That the aforesaid Act of the Legislature of the State
California is not a police regulation, nor was the sa
enacted in pursuance of the police power of the Legislature of s
State, but is a labor law, and, as such, deprives your petitioners
the equal protection of the laws and the freedom of contract gu
anteed to them by the Fourteenth Amendment to the Constitution
the United States.

That while it may be permissible to limit the hours of labor
account of the character of the work itself in which the laborer
engaged, or on account of the place in which the labor is perform
if the character of that place be such as to bear a relationship to t
health of the individual performing the labor, nevertheless it is n
permissible to base the classification upon which said Act rests mere
upon the general occupation in which the employer is engaged,
on account of the place in which the labor is performed if th
place be of such character as to bear no just relationship to t
health of the individual performing the labor, and yet, upon su
improper classifications is the Act hereinabove set forth based.

That your petitioners are informed and believe, and upon su
information and belief aver, that unless the defendants herein, a
each of them, who are specially charged with the enforcement of t
provisions of the Act hereinabove set forth, are restrained by th
Honorable Court, they will proceed to attempt to enforce the pr
visions of the said Act, and will arrest, or cause to be arrested, a
imprisoned, the petitioners herein other than the said Ethel
Nelson, and that as a result thereof your petitioner, Ethel E. Nelso
will lose her employment as pharmacist and store-keeper at said ho
pital, and will thereafter be unable to gain employment in any oth
hospital in the State of California.

17 That the said acts which are threatened by the said defen
ants in attempting to enforce the provisions of the said A
will cause injury and damage to your petitioners in an amount e
ceeding three thousand ($3,000.00) dollars, and that the injury a
damage which will be so occasioned your petitioners will not be su
ceptible of ascertainment according to the ordinary rules of law.

That your petitioners have no plain*t*, speedy, or adequate remed
in the or*ind*ary course of law.

Wherefore petitioners pray that upon final hearing this Cou
grant unto them a Writ of Injunction restraining and enjoining t
defendants and each of them, their attorneys, agents and represe
atives, and the attorneys, agents and representatives of each of sa
defendant-, from enforcing or attempting to enforce, or taking a
proceedings, or causing any proceedings to be initiated, for the e

forcement of that certain Act of the Legislature of the State of California, approved June 12, 1913, set forth in full in the bill, and for such other and general relief as may to the Court be deemed just and equitable; and to the end that plaintiffs may obtain the relief prayed for herein, they further pray the Court to grant them process by subpœna directed to John P. McLaughlin, John Kean, John J. Tobin and W. H. L. Hynes, defendants herein named, commanding them to appear and answer, but not under oath, the same being waived, the allegations of the bill filed herein, and petitioners pray the Court to grant them a Writ of Injunction enjoining and restraining the said defendants John P. McLaughlin, John Kean, John J. Tobin, and W. H. L. Hynes, their attorneys, agents and representatives, and the attorneys, agents and representatives of each of them,
18 until the further order of this Court, from enforcing or attempting to enforce or taking any proceedings or causing any proceedings to be initiated, for the enforcement of that certain Act of the Legislature of the State of California, approved June 12, 1913, and that the Court do fix a time for the hearing of the application for the interlocutory injunction, and to call in the requisite number of Judges to pass thereon, and to issue an order directing the defendants and each of them to show cause on said day why the prayer for the interlocutory injunction should not be granted.

CHARLES S. WHEELER &
JOHN F. BOWIE,
Solicitors for Petitioners.

JOHN F. BOWIE,
Of Counsel.

STATE OF CALIFORNIA,
County of Alameda, ss:

Ethel E. Nelson, being duly sworn, deposes and says:
That she is one of the petitioners named in the above and foregoing Bill; that she has read the above and foregoing Bill, and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated on her information or belief, and as to those matters that she believes it to be true.

ETHEL E. NELSON.

Subscribed and sworn to before me this 11th day of October, 1913.
[SEAL.]

GEO. W. AUSTIN,
Notary Public in and for the County of Alameda, State of California.

19 STATE OF CALIFORNIA,
County of Alameda, ss:

Samuel H. Buteau, being duly sworn, deposes and says:
That he is one of the petitioners named in the within Bill; that he has read the above and foregoing Bill, and knows the contents thereof, and that the same is true of his own knowledge, except as

to the matters which are therein stated on his information or believe, and as to those matters that he believes it to be true.

SAMUEL H. BUTEAU.

Subscribed and sworn to before me this 11th day of October, 1913.

[SEAL.] GEO. W. AUSTIN,
Notary Public in and for the County of Alameda, State of California.

(Endorsed:) Filed Oct. 14 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

20 *Subpœna ad Respondendum.*

UNITED STATES OF AMERICA:

District Court of the United States, Northern District of California. Second Division. In Equity.

The President of the United States of America, Greeting:

To John P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California, W. H. L. Hynes, District Attorney of Alameda County, State of California.

You are hereby commanded, that you be and appear in said District Court of the United States, Second Division, aforesaid, at the Court Room in San Francisco, twenty days from the date hereof, to answer a Bill of Complaint exhibited against you in said Court by William B. Bosley, Peter L. Wheeler, and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, who are citizens of the State of California, and to do and receive what the said Court shall have considered in that behalf.

Witness, the Honorable William C. Van Fleet, Judge of said District Court, this 14th day of October in the year of our Lord one thousand nine hundred and thirteen and of our Independence the 138th.

[SEAL.] WALTER B. MALING, *Clerk*,
By J. A. SCHAERTZER, *Deputy Clerk*.

21 *Memorandum Pursuant to Rule* 12, *Rules of Practice for the Courts of Equity of the United States.*

You Are Hereby Required to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpœna, at the Clerk's Office of said Court, pursuant to said Bill: otherwise the said Bill may be taken pro confesso.

WALTER B. MALING, *Clerk*,
By J. A. SCHAERTZER, *Deputy Clerk*.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Northern District of California, ss:

I hereby certify and return that I served the annexed Subpœna ad Respondendum on the therein-named John Kean Deputy Labor Commissioner of the State of California by handing to and leaving an Attested copy thereof with John Kean Deputy Labor Commissioner personally at San Francisco in said District on the 16th, day of October, 1913.

C. T. ELLIOTT, *U. S. Marshal,*
By PAUL J. ARNERICH, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
Northern District of California, ss:

I hereby certify and return that I served the annexed Subpœna Ad Respondendum on the therein-named W. H. L. Hynes
22 District Attorney of Alameda Co. California by handing to and leaving an Attested copy thereof with W. H. L. Hynes District Attorney of Alameda County personally at Oakland in said District on the 17th, day of October 1913.

C. T. ELLIOTT, *U. S. Marshal,*
By PAUL J. ARNERICH, *Deputy.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
Northern District of California, ss:

I hereby certify and return that I served the annexed Subpœna Ad Respondendum on the therein-named John P. McLaughlin Labor Commissioner of the State of California by handing to and leaving an Attested copy thereof with John P. McLaughlin Labor Commissioner personally at San Francisco, in said District on the 16th, day of October, 1913.

C. T. ELLIOTT, *U. S. Marshal,*
By PAUL J. ARNERICH, *Deputy.*

(Endorsed:) Filed Oct. 18 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

23 *Alias Subpœna Ad Respondendum.*

UNITED STATES OF AMERICA:

District Court of the United States, Northern District of California, Second Division. In Equity.

The President of the United States of America, Greeting:

To John J. Tobin, Deputy Labor Commissioner of the State of California, one of the persons composing and constituting the Bureau of Labor Statistics of the State of California.

You Are Hereby Commanded, That you be and appear in said District Court of the United States, Second Division, aforesaid, at the Court Room in San Francisco, twenty days from the date hereof, to answer a Bill of Compaint exhibited against you in said Court by William B. Bosley, Peter L. Wheeler, and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District who are citizens of the State of California, and to do and receive what the said Court shall have considered in that behalf.

Witness, The Honorable William C. Van Fleet, Judge of said District Court, this 24th day of October in the year of our Lord one thousand nine hundred and thirteen and of our Independence the 138th.

[SEAL.] WALTER B. MALING, *Clerk.*

24 *Memorandum Pursuant to Rule* 12, *Rules of Practice for the Courts of Equity of the United States.*

You are Hereby Required to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpœna, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said Bill may be taken pro confesso.

WALTER B. MALING, *Clerk.*

Return on Service of Writ.

UNITED STATES OF AMERICA,
So. District of California, ss:

I hereby certify and return that I served the annexed "Alias" Subpœna in Equity on the therein-named John J. Tobin by handing to and leaving a true and correct copy thereof with John J. Tobin personally at Los Angeles in said District on the 25th day of October, A. D. 1913.

LEO V. YOUNGWORTH,
U. S. Marshal,
By E. DINGLE, *Deputy.*

(Endorsed:) Filed Oct. 28 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

25 In the District Court of the United States, Northern District of California, Second Division.

No. 48. In Equity.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Order to Show Cause.

On reading the bill filed in the above entitled Court and verified by Samuel H. Buteau and Ethel Nelson it is ordered that the defendants in this case and each of them be and appear in this Court at the Court room thereof in the City and County of San Francisco, State of California, on the 31st day of October, 1913, at 10 o'clock on said day and then and there show cause if any they have why a writ of injunction should not issue pending the final disposition of this cause restraining them and each of them from enforcing or attempting to enforce the provisions of the Act of the Legislature of the State of California approved June 12, 1913, which act purports to limit the hours of labor of women and hospitals to eight hours a day and is applicable to all women so working in hospitals
26 saving and except graduate nurses.

WM. C. VAN FLEET, *Judge.*

(Endorsed:) Filed October 14th 1913. W. B. Maling, Clerk.

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California.

United States Marshal's Return on Order to Show Cause.

I Hereby Certify and Return that at San Francisco, California, on October 15, 1913, I received from the Solicitor for the Complainant herein, three Certified Copies of Order to Show Cause in the above-entitled action certified to by the Clerk of the United States District Court in and for said District on October 15, 1913, and that thereafter to wit, at Oakland, California, I handed to and left one of said Certified Copies of said Order with W. H. L. Hynes, who is the District Attorney of Alameda County, State of California, and on October 16th, at San Francisco, California, I handed to and left one of said Certified Copies of said Order with John P. McLaughlin, who is the Labor Commissioner of the State of California, and John Kean, Deputy Labor Commissioner of the States of California. Said services being made personally.

27

C. T. ELLIOTT,
U. S. Marshal,
By PAUL J. ARNERICH,
Office Deputy.

San Francisco, California, October 17, 1913.

(Endorsed:) Filed Oct. 20 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

UNTED STATES OF AMERICA,
Southern District of California, ss:

Marshal's Return on Order to Show Cause.

No. 48.

WM. B. BOSLEY et al., Plaintiffs,
vs.
JOHN P. MCLAUGHLIN et al., Defendants.

I hereby certify and return that I received an Order to Show Cause in the above entitled cause on the 25th day of October, 1913, and

served the same on October 25, 1913, by handing to and leaving with John J. Tobin a certified copy thereof, at Los Angeles, California.

LEO. V. YOUNGWORTH,
U. S. Marshal,
By ERVIN DINGLE, *Deputy.*

(Endorsed:) Filed October 29 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

28 At a stated term, to wit: the November Term A. D. 1913, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the Court Room in the City and County of San Francisco, on Monday, the 1st day of December, in the year of our Lord one thousand nine hundred and thirteen.

Present: The Honorable William W. Morrow, Circuit Judge, designated to hold and holding this Court; The Honorable William C. Van Fleet, District Judge, and The Honorable Maurice T. Dooling, District Judge.

Before Morrow, C. J., & Van Fleet & Dooling, D. JJS.

No. 48. Equity.

WILLIAM B. BOSELEY et al.
vs.
JOHN P. MCLAUGHLIN et al.

Order Denying Application for Interlocutory Injunction and Dismissing Order to Show Cause.

Plaintiffs' application for an injunction pendente lite, by order to show cause, heretofore heard and submitted, being now fully considered and the Court having rendered its oral opinion, it is ordered that said application be and the same is hereby denied and the order to show cause dismissed.

29 In the United States District Court for the Northern District of California (Second Division).

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Petition for Order Allowing Appeal.

To the Honorable Court, above entitled:

The above named petitioners, William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merrit Hospital" and Ethel E. Nelson, a citizen and resident of this District, and each of them, considering themselves aggrieved by the order made and entered in the above entitled Court on the first day of December, 1913, denying the application of the above named petitioners for an Interlocutory Injunction restraining and enjoining the above named defendants, and each of them, their attorneys, agents and representatives, and the attorneys, agents and representatives of each of the said defendants, from enforcing or attempting to enforce, or taking any proceedings, or causing any proceedings to be
30 initiated for the enforcement of that certain Act of the Legislature of the State of California, approved June 12, 1913, and set forth in full in the bill in the above entitled action, do hereby appeal from said order, to the Supreme Court of the United States for the reasons and upon the grounds specified in their assignment of errors filed herewith and pray that their appeal be allowed and that a transcript of the record, proceedings and papers upon which said order was made and entered as aforesaid, duly authenticated, may be sent to the Supreme Court of the United States, sitting at Washington, D. C., and that a citation issue, as provided by law.

And your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal be made.

CHARLES S. WHEELER &
JOHN F. BOWIE,
Solicitors for Petitioners.

The petition granted, and the appeal allowed, upon giving bond conditioned as required by law in the sum of $500.00.

Dated, this 20th day of December, 1913.

WM. C. VAN FLEET, *Judge.*

(Endorsed:) Filed Dec. 20 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

31 In the United States District Court for the Northern District of California (Second Division).

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Assignment of Errors.

Now, on this 20th day of December, A. D. 1913, come the above named petitioners by their solicitors, Charles S. Wheeler and John F. Bowie, Esqs., and aver that the order made and entered in the above entitled cause on the first day of December, A. D. 1913, denying the application of the said petitioners, for an interlocutory injunction, is erroneous and unjust to the petitioners, and file with their petition for an appeal from the said order, the following assignment of errors:

1. That the Court erred in denying the application of the above named petitioners for an interlocutory injunction, as prayed for in the bill.

32 2. That the order denying the application of the said petitioners for said interlocutory injunction, enjoining the enforcement of the Act of the Legislature of the State of California, approved June 12th, 1913, and fully set forth in the bill, is erroneous because:—

(*a*) The said Act deprived the above named petitioners of the right of freedom of contract guaranteed to them by the 14th amendment to the Constitution of the United States.

(*b*) That said Act denies to the above named petitioners and to each of them, the equal protection of the laws guaranteed by said 14th amendment to the Constitution of the United States, and

(*c*) The said Act operates to deny to the said petitioners, and to each of them, the equal protection of the laws guaranteed by the 14th amendment to the Constitution of the United States, in this, that the said Act is based upon a classification which bears no just or proper relation to the object of the law, and is merely arbitrary.

Wherefore petitioners pray that the said order be reversed and that

the District Court above named be directed to issue an interlocutory injunction, as prayed for.

CHARLES S. WHEELER &
JOHN F. BOWIE,
Solicitors for Petitioners.

(Endorsed:) Filed Dec. 20 1913. W. B. Maling, Clerk, by J. A Schaertzer, Deputy Clerk.

33 In the United States District Court for the Northern District of California (Second Division).

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Bond on Appeal.

Know all me by these present:

That we, William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, as Principals, and Massachusetts Bonding and Insurance Company as surety, are held and firmly bound unto John P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California, W. H. L. Hynes, District Attorney of Alameda County, State of California, in the full and just sum of five hundred ($500.00) Dollars, to be paid to the said John
34 P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California, and W. H. L. Hynes, District Attorney of Alameda County, State of California, their attorneys, successors, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators jointly and severally by these presents.

Signed, sealed and dated this 19th day of December A. D. 1913.

Whereas, lately at a regular term of the District Court of the United States, for the Northern District of California, sitting at San Francisco in said District, in a suit pending in said Court, between William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, as complainants and petitioners, and John P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California, W. H. L. Hynes, District Attorney of Alameda County, State of California, as defendants, an order was made against the said petitioners, denying the application of said petitioners for an interlocutory injunction, and the said petitioners having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the said order in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing them to be and appear at a session of the
35 Supreme Court of the United States to be holden at the City of Washington, District of Columbia, within sixty days after the date of said Citation, on the 18th day of February 1914 next,

Now, therefore, the condition of the above obligation is such that if the said William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

PETER L. WHEELER, [SEAL.]
S. H. BUTEAU, [SEAL.]
WM. B. BOSLEY, [SEAL.]
ETHEL E. NELSON, [SEAL.]
Principals.

[SEAL.] MASSACHUSETTS BONDING AND INSURANCE COMPANY.
FRANK M. HALL,
S. M. PALMER,
Attorneys in Fact.

The foregoing bond on appeal is hereby approved this 20th day of December 1913.

WM. C. VAN FLEET, *Judge.*

(Endorsed:) Filed Dec. 20 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

36 In the United States District Court for the Northern District of California, Second Division.

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Præcipe.

To the Clerk of said Court.

SIR: Please make up, print and issue in the above entitled cause a certified transcript of the record, upon an appeal allowed to the Supreme Court of the United States, sitting at Washington, D. C., from an order denying the application of the petitioners herein for an interlocutory injunction, the said transcript to include the following:—

Bill in equity of petitioners;
Subpœna ad respondendum.
Alias Subpœna ad respondendum.
Order to show cause.
Order denying application for interlocutory injunction, and dismissing order to show cause.
37 Petition for allowance of appeal, and order endorsed thereon;
Citation;
Assignment of errors;
Bond on appeal;
Præcipe for transcript;

all the above to be certified under the hand of the Clerk and the seal of the Court.

CHARLES S. WHEELER AND
JOHN F. BOWIE,
Solicitors for Petitioners and Appellants.

Receipt of a copy of the within Præcipe this 27th day of December 1913, is hereby admitted.

ALBERT T. ROCHE,
W. J. BURPEE.
Attorneys for Defendants.

(Endorsed:) Filed Dec. 29 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

38 In the District Court of the United States in and for the Northern District of California.

No. 48. In Equity.

WILLIAM B. BOSLEY et al., Petitioners,
vs.
JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California, Defendants.

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing thirty-seven (37) pages numbered from 1 to 37 inclusive, to be full, true and correct copies of the bill of complaint, subpœna ad respondendum, alias subpœna ad respondendum, order to show cause, order denying application for injunction, petition for appeal, assignment of errors, bond on appeal and præcipe for record, in the above entitled cause and that the same constitutes the record on appeal to the Supreme Court of the United States, from the order denying an interlocutory injunction, made and entered in the above entitled cause.

I further certify that the cost of the foregoing transcript of appeal is $24.60, that said amount was paid by the attorneys for the plaintiffs, and that the original citation issued in said cause is hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this 29th day of January, A. D. 1914.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk of United States District Court, in and for the Northern District of California.

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to John P. McLaughlin, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, defendants, Greeting:

You are hereby notified that in a certain case in Equity, in the United States District Court in and for the Northern District of California wherein, William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, are complainants and petitioners, and John P. McLaughlin, Labor Commissioner of

the State of California, John Kean, Deputy Labor Commissioner the State of California, and John J. Tobin, Deputy Labor Comm sioner of the State of California, composing and constituting t Bureau of Labor Statistics of the State of California, W. H. Hynes, District Attorney of Alameda County, State of Californ are defendants, an appeal has been allowed the said complainar and petitioners therein to the Supreme Court of the United States.

You are hereby cited and admonished to be and appear at a S preme Court of the United States, at the City of Washington, D. within sixty days after the date of this citation, to show cause, any there be, why the order appealed from should not be correct and speedy justice done to the parties in that behalf.

Witness the Honorable William C. Van Fleet, Judge
40 the United States District Court for the Northern District California, this the 20th day of December, 1913.

WM. C. VAN FLEET, *Judge.*

Due service and receipt of a copy of the within Citation this 20 day of December, 1913 is hereby admitted.

W. BURPEE,
ALBERT T. ROCHE,
Attorneys for Respondents.

[Endorsed:] In Equity. No. 48. In the United States Distr Court for the Northern District of California. William B. Bosle etc., et al. Petitioners, Plaintiff vs. John P. McLaughlin, etc., et Defendants. Citation issued on appeal from order denying appli tion for interlocutory injunction. Filed Dec. 29 1913. W. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk. Charles Wheeler Attorney for Petitioners, Nevada Bank Building San Fra cisco.

Endorsed on cover: File No. 24,055. N. California D. C. U. Term No. 904. William B. Bosley, Peter L. Wheeler and Samu H. Buteau, Trustees of "The Samuel Merritt Hospital" and Eth E. Nelson, appellants, vs. John P. McLaughlin, Labor Commission of the State of California et al. Filed February 16th, 1914. F No. 24,055.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, [redacted] 1914

No. [redacted] 363

WILLIAM B. BOSLEY, PETER L. WHEELER, AND SAMUEL H. BUTEAU, TRUSTEES OF "THE SAMUEL MERRITT HOSPITAL," AND ETHEL E. NELSON, APPELLANTS,

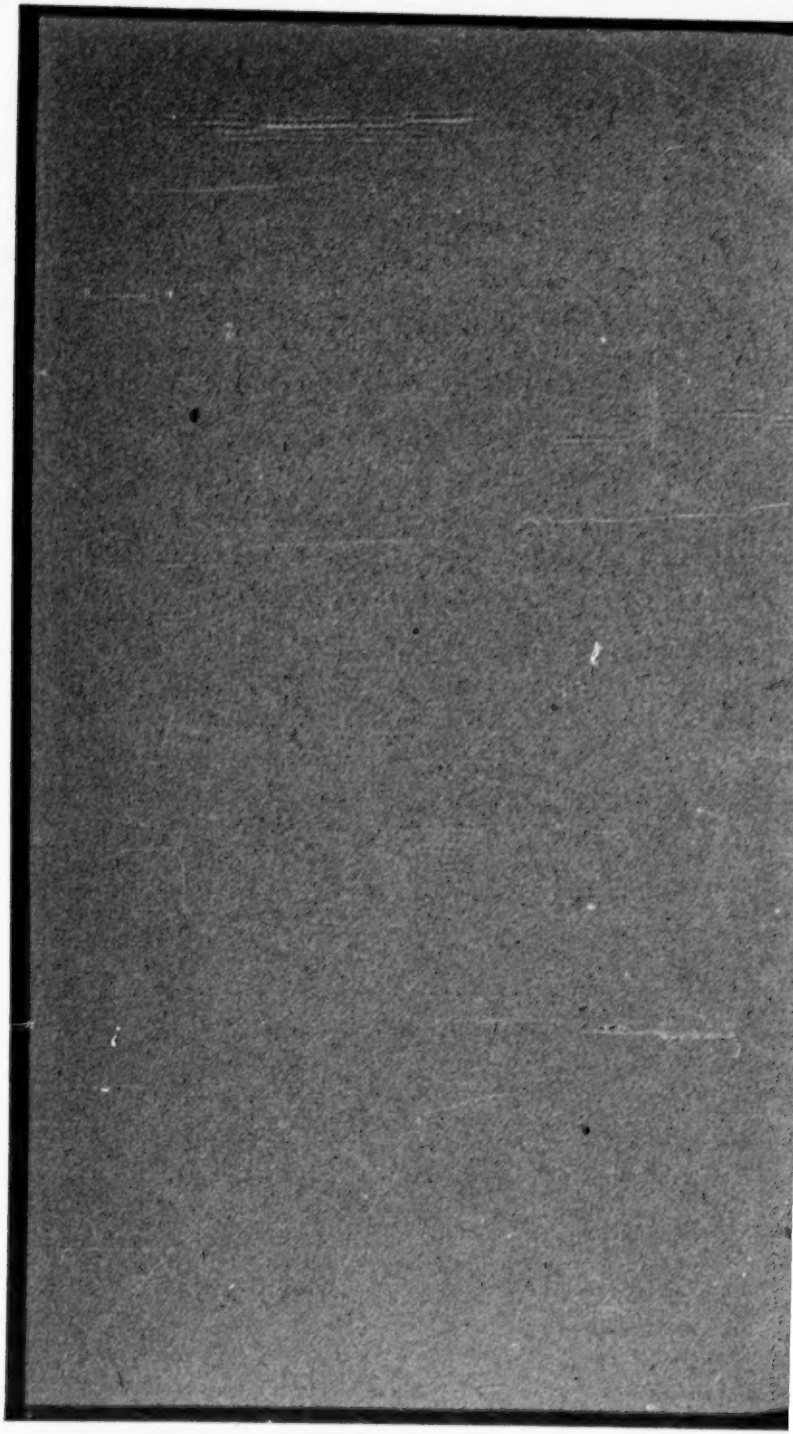
vs.

JOHN P. McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED FEBRUARY 16, 1914.

(24,056)



(24,056)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 905.

WILLIAM B. BOSLEY, PETER L. WHEELER, AND SAMUEL H. BUTEAU, TRUSTEES OF "THE SAMUEL MERRITT HOSPITAL," AND ETHEL E. NELSON, APPELLANTS,

vs.

JOHN P. McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print
Bill of complaint	1	1
Answer	21	12
Order dismissing bill and rejecting offer of testimony by plaintiffs	31	19
Decree	33	20
Petition for appeal	34	21
Allowance of appeal	36	22
Assignment of errors	37	23
Bond on appeal	40	24
Præcipe for record	43	26
Clerk's certificate	45	27
Citation and service	46	28

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 18, 1914.

1 In the United States District Court for the Northern District of California, Second Division.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Bill in Equity for an Injunction.

To the Judges of the District Court of the United States for the Northern District of California:

William B. Bosley, a citizen of the United States and of the State of California, residing in the City and County of San Francisco, in said State; Samuel H. Buteau, Peter L. Wheeler and Ethel E. Nelson, also citizens of the United States and of the State of California, residing in the County of Alameda, in said State, bring this action against John P. McLaughlin a citizen of the State of California, residing in the City and County of San Francisco; John Kean, a citizen of the State of California, residing in the City and County of San Francisco, John J. Tobin, a citizen of the State of California, residing in the City of Los Angeles, County of Los Angeles, and
2 W. H. L. Hynes, a citizen of the State of California, residing at the County of Alameda, in said State, and complaining say:

That John P. McLaughlin is the duly appointed, qualified and acting Commissioner of Labor of the State of California, and the person mentioned, as such Commissioner, in Section three of the Act of the Legislature of the State of California, hereinafter set forth, approved June 12, 1913, as one of the persons charged with the enforcement of said law;

That John Kean is a duly appointed, qualified and acting Deputy Labor Commissioner of the State of California, and one of the persons mentioned, as such Commissioner, in said Section three of said Act of the Legislature of the State of California, approved June 12, 1913, charged with the enforcement of said law;

That John J. Tobin is a duly appointed, qualified and acting Deputy Labor Commissioner of the State of California, and one of the persons mentioned, as such Commissioner, in said Section three of said Act of the Legislature of the State of California, approved June 12, 1913, charged with the enforcement of said law.

That John P. McLaughlin, John Kean and John J. Tobin, constitute and compose the Bureau of Labor Statistics mentioned in Sub-

division 3 of the Act of the Legislature of the State of California, approved June 12, 1913, and charged with the enforcement of said Act.

That W. H. L. Hynes is the duly elected qualified and acting District Attorney of the County of Alameda, State of California, and is charged, by virtue of his said office, with the enforcement in said County of the laws of the State of California.

3 That under and by virtue of a certain instrument, dated the 21st day of April, 1891, Catherine M. Garcelon conveyed to certain Trustees therein named, and to their successors certain real and personal property, to be by them held as Trustees of The Samuel Merritt Hospital.

That under the terms and provisions of said instrument creating said trust, the said Trustees are required to found, establish, and erect a hospital in the County of Alameda, State of California, and said Trustees are further required by the terms of said trust instrument to maintain said hospital and to care for, nurse, treat, and otherwise aid, free of all charge for such care, nursing, treatment, and aid, as many deserving poor persons suffering from injury or afflicted with any curable, non-contagious disease, as the income from the fund provided therefor will permit, after first deducting a five per cent reserve for maintenance and additional improvements.

That in and by the provisions of said instrument, said Trustees are required to care for, nurse, treat and otherwise aid, free of all charge for such care, nursing, treatment and aid, not less than twenty (20) deserving poor persons suffering from injury, or afflicted with any curable, non-contagious disease.

That in and by the provisions of said instrument, it is further declared that at said hospital so to be founded, erected, and

4 maintained, there might be treated persons suffering from injury, or afflicted with any curable, non-contagious disease, from whom compensation for such treatment might be collected and received, but said instrument creating said trust further provided that the number of persons from whom compensation might be collected and received, should, under no circumstances, exceed the number of deserving poor persons being cared for, nursed, treated, and otherwise aided free of cost and expense.

That in and by the provisions of said instrument, it is further declared that any income or revenue derived from the care and treatment of those persons from whom compensation for such care and treatment might be collected and received, should be applied and devoted to the care, nursing, treatment and aid, free of cost and expense, of as many additional deserving poor persons suffering from injury or afflicted with any curable, non-contagious disease as the income or revenue so derived would be sufficient to provide for.

That pursuant to the provisions of said instrument, the Trustees therein named, and their successors in trust, proceeded to,

5 and did found and establish The Samuel Merritt Hospital in the City of Oakland, County of Alameda, State of California, and proceeded to and did erect the said hospital buildings, and have maintained and do now maintain the said hospital pursuant to the provisions of the said trust instrument.

That your petitioners William B. Bosley, Peter L. Wheeler, and Samuel H. Buteau now are the Trustees of the trust above set forth and declared and, as such Trustees, there is vested in them the title to certain real property, which, together with the hospital buildings situate thereon, is of the value of over $150,000. That there is also vested in said Trustees certain other property of the value of $500,000, from which property last referred to there is derived a fund for the care, nursing, and treatment, at said hospital, of deserving poor persons suffering from injury or afflicted with any curable, non-contagious disease, and for the maintenance of the said hospital.

That there are now maintained in the said hospital forty (40) beds, where deserving poor persons to that number, suffering from injury or afflicted with any curable, non-contagious disease, may receive care, nursing, and treatment free of all cost and expense to them, and that there are also now maintained in said hospital forty (40) beds, where persons suffering from injury or afflicted with any curable, non-contagious disease, may be cared for, nursed, and treated, and from whom compensation therefor may be collected and received.

II.

That in and by an Act of the Legislature of the State of California, approved June 12, 1913, entitled "An Act to amend an Act entitled 'An Act limiting the hours of labor of females em-
6 ployed in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female, to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect, or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or any other agent of any such employer to violate the provisions of this act,' approved March 22nd, 1911." it is provided as follows:

"The people of the State of California do enact as follows:

"SECTION 1. An Act entitled 'An Act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female, to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of

any such employer to violate the provisions of this act,' approved March 22, 1911, is hereby amended to read as follows:

"SECTION 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging house, apartment house, hospital, place of amusement, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; provided, however, that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, nor to graduate nurses in hospitals.

"SEC. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or
7 other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

"SEC. 3. The bureau of labor statistics shall enforce the provisions of this act. The commissioner, his deputies and agents, shall have all powers and authority of sheriffs or other peace officers, to make arrests for violations of the provisions of this act, and to serve all processes and notices thereunder throughout the state.

"SEC. 4. Any employer who shall permit or require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for a first offense, by a fine of not less than twenty dollars nor more than fifty dollars; for a second offense, by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars; or by imprisonment for not more than sixty days, or by both such fine and imprisonment. All fines imposed and collected under the provisions of this act shall be paid into the state treasury and credited to the contingent fund of the bureau of labor statistics."

That the defendants named herein, and each of them, are charged with the duty of enforcing the provisions of the Act hereinabove set forth.

III.

That in the conduct, maintenance, and operation of the various departments of The Samuel Merritt Hospital there are employed ap-

proximately eighty (80) females and eighteen (18) males; that of said females so employed, ten (10) are employed to care for, nurse, and aid the patients at said hospital, and said ten (10) females so employed are what are known as Graduate Nurses, that is to say, said ten (10) females have pursued and completed, at some training school for nurses in a hospital, courses of study and training in the profession or occupation of nursing and attending the sick and injured, and have received, in recognition thereof, diplomas or
8 certificates of graduation from said courses of study; that because of their qualifications, said graduate nurses are paid a compensation greatly in excess of that paid to female pupils engaged in nursing in hospitals while students of the training schools for nurses in hospitals.

That in addition to said ten (10) females so engaged and employed in said hospital, and known as graduate nurses, there are employed at said hospital one female as bookkeeper, whose duties consist of keeping the books of account of said hospital, two females performing the usual duties of office assistants, one female whose occupation is that of seamstress, one female whose occupation is that of matron or housekeeper, five females engaged in the performance of ordinary household duties, and one female, viz: your petitioner, Ethel E. Nelson, whose principal occupation in said hospital is that of pharmacist, and who is also employed as store-keeper in said hospital.

That the said Ethel E. Nelson is a graduate and licensed pharmacist, being a graduate of the Department of Pharmacy of the University of California of the class of 1904, and thereafter licensed by the State Board of Pharmacy of California to pursue the profession of pharmacy in the State of California, and that your petitioner, Ethel E. Nelson, is entitled to pursue said profession in said State.

That the duties of the said Ethel E. Nelson consist in caring for the contents of the store room in said hospital, and that her duties as such store-keeper occupy her time during the period from eight o'clock A. M. to twelve noon of each day; but that the paramount occupation and chief duty of said Ethel E. Nelson in said hospital is in the capacity of pharmacist, and this occupation involves the mixing and compounding of drugs for use and application in
9 said hospital in the treatment of its patients, and that the character of the work conducted in said hospital, that is to say, the care and treatment of sick and injured persons, requires that the said Ethel E. Nelson be subject and available to call, for the purpose of mixing and compounding drugs for the treatment of sick and injured persons in said hospital, as and when the same are required: that, in consequence of the exigencies of the occupation of said Ethel E. Nelson as a pharmacist in said hospital, it sometimes happens that she is required to continue in the performance of her labor for a greater period than eight hours on some days, and for a greater period than forty-eight hours in some weeks.

That the work done and performed in said hospital by the said Ethel E. Nelson, and that done and performed in said hospital by the said matron or housekeeper, and the work done and performed in

said hospital by the said seamstress, and the work done and performed in said hospital by the said book-keeper, office assistants, and household servants, except that all of the said work is done and performed in a hospital, and at the direction and under the control of the administrative department thereof, differs in no manner or respect from the work done and performed by persons engaged in similar employments or occupations and not employed in hospitals.

That your petitioner, Ethel E. Nelson, receives a salary of seventy-five ($75.00) dollars per month, together with board, lodging, and laundry, as compensation for the services rendered by her to the said hospital as such pharmacist and store-keeper.

That your petitioner, Ethel E. Nelson, is desirous of remaining and continuing in the employ of the said hospital in the
10 occupations in which she is now therein engaged, but that in the event that the relief herein prayed for is denied, the Trustees of The Samuel Merritt Hospital will discharge the said Ethel E. Nelson from its employ, and your petitioners are informed and believe, and upon such information and belief aver, that the said Ethel E. Nelson will be unable thereafter to find and procure employment in any other hospital in the State of California in the practice of her profession of pharmacy.

That if the Act of the Legislature of the State of California, hereinabove set forth, be held or declared to be valid, or if the provisions of the said Act be enforced by the officers of the State of California charged with the enforcement thereof, the employment of female pharmacists in hospitals in the State of California will become impracticable, and that as a result of the enforcement, or the attempted enforcement, of the said Act hereinbefore set forth, your petitioner, Ethel E. Nelson, will suffer loss or damage in excess of the sum of three thousand ($3,000.00) dollars.

That in the event that said Act of the Legislature of the State of California is held or declared to be valid, or its provisions enforced, or attempted to be enforced, by the defendants herein, the right of the said Ethel E. Nelson freely and voluntarily to contract as to her hours of labor as a pharmacist in said hospital will be abridged and impaired, and as a result thereof the said Ethel E. Nelson will suffer loss or damage in excess of the sum of three thousand ($3,000) dollars.

That in The Samuel Merritt Hopital, and as a part thereof, there is established, operated and maintained a school wherein females pursue a course of study and training to nurse the sick and
11 injured; that a three year course of study and training is therein provided, upon the satisfactory completion whereof, diplomas or certificates of graduation are issued; that in the third year class of said school, twenty four females are enrolled; that in the second year class of said school, eighteen females are enrolled; that in the first year class of said school, twenty-three females are enrolled; that a part of the education and training of said pupil or student nurses consists in aiding, nursing, and attending to the wants of the sick and injured persons in said hospital; that the work done and performed by said pupil or student nurses, while engaged in pur-

suing the prescribed course of study and training, in aiding, nursing, and attending to the wants of the sick and injured persons in said hospital, is of value to said hospital, and in consideration thereof said pupil or student nurses are each paid the sum of ten dollars per month during each of the first two years of said course, and twelve dollars and fifty cents per month during the third year of said course, and, in addition thereto, are furnished and provided, throughout the three years, with free board, lodging, and laundry.

That the cost to said hospital of maintaining said school for the education and training of female nurses is the sum of twenty five hundred dollars ($2,500.00) per month, but that the cost of procuring to be performed, by graduate nurses, the work now performed in said hospital by said pupil or student nurses, would be the sum of not less than thirty-six hundred dollars ($3,600.00) per month; that the cost to said hospital of procuring to be done and performed, by females neither pupils in the said school nor graduate nurses, the work now done and performed by said pupil or student nurses, would be the sum of three thousand ($3,000.00) dollars per month.

That the respective costs of labor, as hereinabove stated,
12 are estimated on the basis that the hours of labor for said respective classes of females are not regulated or restricted by law.

That the reason why the work done and performed in said hospital by said pupil or student nurses can be done for less expense when performed by them, is due to the fact that the compensation of said pupils or students in said school is paid for not only in money, board, lodging, and laundry, but also in the education and training they receive from the physicians and surgeons employed in and about said hospital, and by the fact that the labor performed by them in aiding, nursing, and attending the wants of the sick and injured persons in said hospital, is of itself educational in character, and a necessary and indispensable part of their education and training.

That the character of the occupation in which said pupil or student nurses are engaged, viz: that of caring for, nursing and treating the sick and injured, is such that their hours of labor must be largely determined by the exigencies of the case upon which they are attending.

That in the event that the hours of labor of said pupil or student nurses are limited, or the law purporting to limit their hours of labor to eight hours in one day and forty-eight hours in one week is enforced, or attempted to be enforced, by the defendants herein, it will be necessary for The Samuel Merritt Hospital either to cease the conduct and operation of said school for the education and training of nurses, or to increase by at least fifty per cent. the number of females attending said school, in order that an equal return in labor and service to that rendered by said pupil or student nurses without restriction of law can be made and given to said hospital.

13 That in the event that the number of females attending said school is increased fifty per cent., the cost and expense to said hospital of maintaining said school will likewise increase fifty per cent., and an expense of more than twelve hundred fifty

($1,250.00) dollars per month will thereby be added to the present cost and expense of maintaining and operating said school and hospital; that in the event that the conduct and operation of said school is abandoned, a loss to said hospital of more than one thousand dollars ($1,000.00) per month will be incurred.

That if the act of the Legislature of the State of California, hereinabove set forth, be held to be valid, or if the defendants herein enforce, or attempt to enforce, the provisions thereof, and the relief herein prayed be not granted, an additional expense to said hospital of more than one thousand dollars ($1,000.00) per month will be incurred.

That the value of the right which the Trustees of said hospital seek to protect by this Bill, viz: the right of freedom of contract, exceeds the sum of three thousand ($3,000.00) dollars.

That your petitioners are informed and believe, and upon such information and belief aver, that, unless restrained by this Honorable Court, the defendants herein will enforce, or attempt to enforce, the provisions of the Act of the Legislature hereinabove set forth, and that as a result thereof it will become necessary for the Trustees of the said hospital to decrease the number of deserving poor persons that may be cared for, nursed and treated at said hospital free of cost, by at least ten (10) persons, and that, accordingly, under the terms and provisions of the trust instrument hereinabove referred to establishing said hospital, it will be incumbent upon the Trus-
14 tees of said hospital to decrease the number of sick or injured persons who may be cared for, nursed and treated at said hospital, and from whom compensation may be collected and received therefor, so that the number of persons receiving care, nursing, and treatment at said hospital, and from whom compensation is received therefor, shall not exceed the number of deserving poor persons receiving, gratuitously, care, nursing and treatment at said hospital, and, as a necessary result thereof, there will be a corresponding decrease in the revenue now received from persons cared for, nursed and treated, and from whom compensation may be collected and received, and which said revenue, when so received, has been and is now applied towards the care, nursing and treatment of as many other and additional deserving poor sick or injured persons as the revenue so received will permit.

That the Trustees of The Samuel Merritt Hospital desire, as Trustees of a charitable trust, to perform their duties thereunder to the best of their ability, but said Trustees will, unless the defendants herein are restricted by this Honorable Court from enforcing or attempting to enforce the provisions of the Act of the Legislature hereinabove set forth, be subjected to repeated arrests and prosecutions, merely because of the attempt by said Trustees to execute said trust in the manner in which said Trustees believe said trust should be executed.

That an attempted enforcement of said Act of the Legislature, if the same be invalid and unconstitutional, will operate to destroy and abolish said school for the education and training of nurses now maintained by and at said hospital, and will cause a loss to said

hospital of more than three thousand ($3,000.00) dollars.

15 That your petitioners are informed and believe, and upon such information and belief aver, that the said Act of the Legislature of the State of California, hereinabove set forth, is contrary to and violative of the provisions of the Fourteenth Amendment to the Constitution of the United States, in each of the following particulars:

1. That said Act deprives your petitioners of the right of freedom of contract guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

2. That said Act denies to your petitioners, and to each of them, the equal protection of the laws guaranteed by said Fourteenth Amendment to the Constitution of the United States.

3. That said Act operates to deny to these petitioners, and to each of them, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, in this, that the said Act is based upon a classification which bears no just or proper relation to the object of the law, and is a mere arbitrary selection.

That the fact that labor is performed by females in hospitals does not, of itself, afford a basis of classification; that, as a matter of fact, there is no difference whatever between labor performed in hospitals and the same kind of labor performed elsewhere; that a hospital is not an unhealthful or unsanitary place for the performance of labor, but, on the contrary, the health of those performing labor in hospitals is better safe-guarded than is generally the case with the health of those performing labor elsewhere, and that a properly conducted hospital for the treatment of injuries and non-contagious diseases is one of the most sanitary and healthful places in which labor may be performed.

That there is no just or reasonable ground for exempting from the operation of said Act females engaged in harvesting, cur-

16 ing, canning or drying of any variety of perishable fruit or vegetable, and graduate nurses in hospitals, and by the provisions of said Act to limit the hours of labor of other females therein denominated or classified, including all females employed in hospitals not graduate nurses and of females employed in harvesting, curing, canning or drying any variety of perishable fruit or vegetable, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States is denied to your petitioner, Ethel E. Nelson.

That said Act of the Legislature of the State of California is contrary to, and violative of, the provisions of the Fourteenth Amendment to the Constitution of the United States, and denies to your petitioners the equal protection of the laws, in this, that in and by the said Act the sole penalty imposed for a violation of its provisions is imposed upon the owners or proprietors of a hospital or of the other places wherein the hours of labor of females are restricted, and no penalty whatsoever is imposed upon the person performing labor more than eight hours in one day, even though such labor be volun-

tarily performed, and not at the request or instance of the owner or proprietor of the place wherein such labor is performed.

That the aforesaid Act of the Legislature of the State of California is not a police regulation, nor was the same enacted in pursuance of the police power of the Legislature of said State, but is a labor law, and, as such, deprieves your petitioners of the equal protection of the laws and the freedom of contract guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

That while it may be permissible to limit the hours of labor on account of the character of the work itself in which the la-
17 borer is engaged, or an account of the place in which the labor is performed if the character of that place be such as to bear a relationship to the health of the individual performing the labor, nevertheless it is not permissible to base the classification upon which said Act rests merely upon the general occupation in which the employer is engaged, or on account of the place in which the labor is performed if that place be of such character as to bear no just relationship to the health of the individual performing the labor, and yet, upon such improper classifications is the Act hereinabove set forth based.

That your petitioners are informed and believe, and upon such information and belief aver, that unless the defendants herein, and each of them, who are specially charged with the enforcement of the provisions of the Act hereinabove set forth, are restrained by this Honorable Court, they will proceed to attempt to enforce the provisions of the said Act, and will arrest, or cause to be arrested, and imprisoned, the petitioners herein other than the said Ethel E. Nelson, and that as a result thereof your petitioner, Ethel E. Nelson, will lose her employment as pharmacist and store-keeper at said hospital, and will thereafter be unable to gain employment in any other hospital in the State of California.

That the said acts which are threatened by the said defendants in attempting to enforce the provisions of the said Act will cause injury and damage to your petitioners in an amount exceeding three thousand ($3,000.00) dollars, and that the injury and damage which will be so occasioned your petitioners will not be susceptible of ascertaining according to the ordinary rules of law.

That your petitioners have no plain, speedy, or adequate remedy in the ordinary course of law.

18 Wherefore Petitioners pray that upon final hearing this Court grant unto them a Writ of Injunction restraining and enjoining the defendants and each of them, their attorneys, agents and representatives, and the attorneys, agents and representatives of each of said defendants, from enforcing or attempting to enforce, or taking any proceedings, or causing any procedings to be initiated, for the enforcement of that certain Act of the Legislature of the State of California, approved June 12, 1913, set forth in full in the bill, and for such other and general relief as may to the Court be deemed just and equitable; and to the end that plaintiffs may obtain the relief prayed for herein, they further pray the Court to grant them process by subpœna directed to John P. McLaughlin, John Kean,

John J. Tobin and W. H. L. Hynes, defendants herein named, commending them to appear and answer, but not under oath, the same being waived, the allegations of the bill filed herein, and petitioners pray the Court to grant them a Writ of Injunction enjoining and restraining the said defendants John P. McLaughlin, John Kean, John J. Tobin and W. H. L. Hynes, their attorneys, agents and representatives, and the attorneys, agents and representatives of each of them, until the further order of this Court, from enforcing or attempting to enforce, or taking any proceedings, or causing any proceedings to be initiated, for the enforcement of that certain Act of the Legislature of the State of California, approved June 12, 1913, and that the Court do fix a time for the hearing of the application for the interlocutory injunction, and to call in the requisite number of Judges to pass thereon, and to issue an order directing the defendants and each of them to show cause on said day why the prayer for the interlocutory injunction should not be granted.

CHARLES S. WHEELER AND
JOHN F. BOWIE,
Solicitors for Petitioners.

JOHN F. BOWIE, *Counsel.*

19 STATE OF CALIFORNIA,
County of Alameda, ss:

Ethel E. Nelson, being duly sworn, deposes and says:
That she is one of the petitioners named in the above and foregoing Bill; that she has read the above and foregoing Bill, and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated on her information or belief, and as to those matters that she believes it to be true.

ETHEL E. NELSON.

Subscribed and sworn to before me this 11th day of October, 1913.
[SEAL.]
GEO. W. AUSTIN,
Notary Public in and for the County of Alameda, State of California.

20 STATE OF CALIFORNIA,
County of Alameda, ss:

Samuel H. Buteau, being duly sworn, deposes and says:
That he is one of the petitioners named in the within Bill; that he has read the above and foregoing Bill, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

SAMUEL H. BUTEAU.

Subscribed and sworn to before me this 11th day of October, 1913.
[SEAL.]
GEO. W. AUSTIN,
Notary Public in and for the County of Alameda, State of California.

(Endorsed:) Filed Act. 14 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

21 In the United States District Court for the Northern District of California, Second Division.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Answer of Defendants to Bill in Equity for an Injunction.

Now come the defendants, John P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, John J. Tobin, Deputy Labor Commissioner of the State of California, and W. H. L. Hynes, District Attorney of Alameda County, State of California, in the above entitled suit, and for answer to the bill of complaint heretofore filed herein by the plaintiffs, admit, deny and allege as follows;—to wit:

I.

Said defendants admit all the allegations contained in paragraph one in plaintiff's bill of complaint.

II.

Said defendants admit all of the allegations contained in paragraph 2 of plaintiffs' bill of complaint.

22 III.

Said defendants have no information or belief upon the subject, sufficient to enable them to answer the allegations, or any of them, contained in that portion of paragraph three of plaintiffs' said bill of complaint as follows:—

"The duties of the said Ethel E. Nelson consist in caring for the contents of the store-room in said hospital, and that her duties as such store-keeper occupy her time during the period from eight o'clock A. M. to twelve noon of each day; but that the paramount occupation and chief duty of said Ethel E. Nelson in said hospital is in the capacity of pharmacist, and this occupation involves the mixing and compounding of drugs for use and application in said hospital in the *the* treatment of its patients, and that the character of the work conducted in said hospital, that is to say, the care and

treatment of sick and injured persons, requires that the said Ethel E. Nelson be subject and available to call, for the purpose of mixing and compounding drugs for the treatment of sick and injured persons in said hospital, as and when the same are required; that in consequence of the exigencies of the occupation of said Ethel E. Nelson as a pharmacist in said hospital, it sometimes happens that she is required to continue in the performance of her labor for a greater period than eight hours on some days, and for a greater period than forty-eight hours in some weeks.

"That the work done and performed in said hospital by the said Ethel E. Nelson, and that done and performed in said hospital by the said matron or housekeeper, and the work done and performed in said hospitals by the said seamstress, and the work done and performed in said hospital by the said bookkeeper, office assistants and household servants, except that all of the said work is done and performed in a hospital, and at the direction and under the control of the administrative department thereof, differs in no manner or respect from the work done and performed by persons engaged in similar employments or occupations, and not employed in hospitals.

"That your petitioner, Ethel E. Nelson, receives a salary of seventy-five ($75.00) dollars per month, together with board, lodging, and laundry, as compensation for the services rendered by her to the said hospital as such pharmacist and storekeeper.

"That your petitioner, Ethel E. Nelson, is desirous of remaining and continuing in the employ of the said hospital in the occupations in which she is now therein engaged, but that in the event that the relief herein prayed for is denied, the Trustees of the Samuel Merritt Hospital will discharge the said Ethel E. Nelson from its employ, and your petitioners are informed and believe, and upon such information and belief aver, that the said Ethel E. Nelson will be unable thereafter to find and procure employment in any other hospital in the State of California in the practice of her profession of pharmacy."

and placing their denial upon that ground, deny each and every allegation in said portion of said third paragraph of said bill of complaint alleged.

Said defendants deny that if said act of said Legislature of the State of California be held or declared to be valid, or if the provisions or any of the provisions of said act be enforced by the officers of the State of California, charged with the enforcement thereof, or any of them the employment of female pharmacists or any female pharmacist in hospitals or any hospital in the State of California, will become impracticable, or that as the result of the enforcement or the attempted enforcement of said act or any of its provisions, the said petitioner—Ethel E. Nelson—will suffer loss or damage in excess of the sum of three thousand ($3,000) dollars, or in any sum whatever.

Said defendants deny that in the event said act of said Legislature of the State of California is held or declared to be valid, or its provisions or any of them enforced or attempted to be enforced by said

defendants or any of them or otherwise or at all, the right of the said Ethel E. Nelson to freely or voluntarily contract as to her hours of labor as a pharmacist in said hospital or any hospital, will be abridged or impaired, or that as a result thereof the said Ethel E. Nelson will suffer loss or damage in excess of the sum of three thousand ($3,000) dollars, or any other sum or any damage whatsoever.

Said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations contained in that portion of said paragraph 3 of said plaintiffs' bill of complaint, as follows:—

"That the cost to said hospital of maintaining said school for the education and training of female nurses is the sum of twenty-five hundred dollars ($2,500.00) per month, but that the cost of procuring to be performed, by graduate nurses, the work now performed in said hospital by said pupil or student nurses, would be the sum of not less than thirty-six hundred dollars ($3,600.00) per month; that the cost to said hospital of procuring to be done and performed by females, neither pupils in the said school nor graduate nurses, the work now done and performed by said pupil or student
24 nurses, would be the sum of three thousand ($3,000.00) dollars per month.

"That the respective costs of labor, as hereinabove stated, are estimated on the basis that the hours of labor for said respective classes of females are not regulated or restricted by law.

"That the reason why the work done and performed in said hospital by said pupil or student nurses can be done for less expense when performed by them, is due to the fact that the compensation of said pupils or students in said school is paid for not only in money, board, lodging and laundry, but also in the education and training they receive from the physicians and surgeons employed in and about said hospital, and by the fact that the labor performed by them in aiding, nursing and attending the wants of the sick and injured persons in said hospital, is of itself educational in character, and a necessary and indispensable part of their education and training.

"That the character of the occupation in which said pupil or student nurses are engaged, viz: That of caring for, nursing and treating the sick and injured, is such that their hours of labor must be largely determined by the exigencies of the case upon which they are attending.

"That in the event that the hours of labor of said pupil or student nurses are limited, or the law purporting to limit their hours of labor to eight hours in one day and forty-eight hours in one week is enforced, by the defendants herein, it will be necessary for The Samuel Merritt Hospital either to cease the conduct and operation of said school for the education and training of nurses, or to increase by at least fifty percent the number of females attending said school, in order that an equal return in labor and service to that rendered by said pupil or student nurses without restriction of law can be made and given to said hospital.

"That in the event that the number of females attending said

school is increased fifty per cent. the cost and expense to said hospital of maintaining said school will likewise increase fifty per cent., and an expense of more than twelve hundred fifty ($1,250.00) dollars per month will thereby be added to the present cost and expense of maintaining and operating said school and hospital; that in the event that the conduct and operation of said school is abandoned, a loss to said hospital of more than one thousand ($1,000.00) dollars per month will be incurred.

"That is the act of the Legislature of the State of California, hereinabove set forth, be held to be valid, or if the defendants herein enforce, or attempt to enforce, the provisions thereof, and the relief herein prayed be not granted, an additional expense to said hospital of more than one thousand dollars per month will be incurred.

"That the value of the right which the Trustees of said hospital seek to protect by this Bill, viz: the right of freedom of contract, exceeds the sums of three thousand ($3,000.00) dollars."

and basing their denial upon that ground, deny each and every allegation in said portion of said paragraph three of said plaintiffs' bill of complaint, hereinabove lastly set forth.

These defendants admit that unless restrained by this
25 Honorable Court, said defendants will attempt to enforce and enforce the provisions of said act of said legislature set forth in plaintiffs' bill of complaint.

Said defendants have no information or belief sufficient to enable them to answer that portion of said paragraph three of plaintiff's bill of complaint, as follows:

"And that as a result thereof it will become necessary for the Trustees of the said hospital to decrease the number of deserving poor persons that may be cared for, nursed and treated at said hospital free of cost, by at least ten (10) persons, and that, accordingly, under the terms and provisions of the trust instrument hereinabove referred to establishing said hospital, it will be incumbent upon the Trustees of said hospital to decrease the number of sick or injured persons who may be cared for, nursed and treated at said hospital, and from whom compensation may be collected and received therefor, so that the number of persons receiving care, nursing and treatment at said hospital, and from whom compensation is received therefor, shall not exceed the number of deserving poor persons receiving, gratuitously, care, nursing and treatment at said hospital. and as a necessary result thereof there will be a corresponding decrease in the revenue now received from persons cared for, nursed and treated, and from whom compensation may be collected and received, and which said revenue, when so received, has been and is now applied towards the care, nursing and treatment of as many other and additional deserving poor, sick or injured persons as the revenue so received will permit."

and placing their denial upon that ground, deny each and every the allegations in said portion of said paragraph three in said bill of complaint hereinabove lastly set forth.

Said defendants admit that the Trustees of said Samuel Merritt Hospital desire, as Trustees of a charitable trust, to perform their duties thereunder to the best of their ability; and unless these defendants are restrained by this Honorable Court from enforcing or attempting to enforce the provisions of said Act of said Legislature, said Trustees will be subjected to arrests and prosecutions, in the event said Trustees violate the provisions of said Act of said Legislature. These defendants deny, however, that they will interfere with the Trustees or any of them, unless said Trustees or some of them violate some of the provisions of said act of said legislature.

26 Said defendants have no information or belief upon the subject sufficient to enable them to answer the allegations contained in that portion of said paragraph three of said plaintiffs' complaint, as follows:—

"That an attempted enforcement of said act of the Legislature, if the same be invalid and unconstitutional, will operate to destroy and abolish said school for the education and training of nurses now maintained by and at said hospital and will cause a loss to said hospital of more than three thousand ($3,000.00) dollars.

"That your petitioners are informed and believe, and upon such information and belief aver, that the said Act of the legislature of the State of California, hereinabove set forth, is contrary to and violative of the provisions of the Fourteenth Amendment to the Constitution of the United States, in each of the following particulars:

1. That said act deprives your petitioners of the right of freedom of contract guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

2. That said act denies to your petitioners, and to each of them, the equal protection of the laws guaranteed by said Fourteenth Amendment to the Constitution of the United States.

3. That said act operates to deny to these petitioners, and to each of them, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, in this, that the said act is based upon a classification which bears no just or proper relation to the object of the law, and is a mere arbitrary selection.

That the fact that labor is performed by females in hospitals does not, of itself, afford a basis of classification; that, as a matter of fact, there is no difference whatever between labor performed in hospitals and the kind of labor performed elsewhere."

and placing their denial upon that ground, deny each and every the allegations in said portion of said bill of complaint hereinabove lastly set forth.

Said defendants deny that said act of said legislature of the State of California is contrary to or violative of the provisions of the Fourteenth Amendment to the Constitution of the United States, either in the particulars set forth in said paragraph three of plaintiffs' bill of complaint, or any of them, or any other particular.

Said defendants deny that the fact that labor, if performed by

females in hospitals, does not of itself afford a basis of classification; or that there is no difference whatever between
27 labor performed in hospitals, or in a hospital, and the same kind of labor performed elsewhere.

Said defendants have no information or belief upon the subject sufficient to enable them to answer that portion of the allegations contained in said paragraph three of said plaintiffs' bill of complaint, as follows:—

"That a hospital is not an unhealthful or unsanitary place for the performance of labor, but, on the contrary, the health of those performing labor in hospitals is better safeguarded than is generally the case with the health of those performing labor elsewhere, and that a properly conducted hospital for the treatment of injuries and non-contagious diseases is one of the most sanitary and healthful places in which labor may be performed."

and placing their denial upon that ground, deny each and every of the allegations contained in said paragraph three of said plaintiffs' bill of complaint hereinabove lastly set forth.

Said defendants deny that there is no just or reasonable ground for exempting from the operation of this act, females engaged in the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable; or graduate nurses in hospitals, or any hospital; or by the provisions of said act to limit the hours of labor of other females, or any females therein denominated or classified; or including females or any female, employed in hospitals, not graduate nurses.

Said defendants deny that by the exemption of graduate nurses or of females employed in the harvesting, curing, canning or drying any variety of perishable fruit or vegetable, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States is denied to Ethel E. Nelson.

Said defendants deny that said Act of the Legislature of the State of California is contrary to or violative of the provisions, or any of them, of the Fourteenth Amendment to the Constitution of the United States, or that it denies to said petitioners or any of
28 them, the equal protection of the law in the particulars or any of them set forth in said paragraph three of said bill of complaint, or in any other particular or at all.

Said defendants deny that the said act of the legislature is not a police regulation, or that the same was not enacted in pursuance of the police power of the Legislature of said State, or is a labor law, or deprives said petitioners or any of them of equal protection of the laws or any of them, or the freedom of contract guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

Said defendants deny that it is not permissible to base the classification upon which said Act rests, merely by the general occupation in which the employer is engaged, or on account of the place in which the labor is performed, if that place be of such character as to bear no just relationship to the health of the individual per-

forming the labor. And deny that said Act is based upon classification, or that such classifications are improper.

Said defendants admit that unless restrained by this Honorable Court they will attempt to enforce the provisions of said Act, and will arrest or cause to be arrested said petitioners other than said Ethel E. Nelson, in the event that said petitioners violate said act.

Said defendants have no information or belief upon the subject sufficient to enable them to answer that portion of the allegations contained in said paragraph three of said plaintiffs' bill of complaint, as follows:—

"And that as a result thereof your petitioner Ethel E. Nelson, will lose her employment as pharmacist and store-keeper at said hospital, and will there after be unable to gain employment in any other hospital in the State of California.

"That the said acts which are threatened by the said defendants in attempting to enforce the provisions of the said Act will cause injury and damage to your petitioners in an amount exceeding three thousand ($3,000.00) dollars, and that the injury and dam-
29 age which will be so occasioned your petitioners will not be susceptible of ascertainment according to the ordinary rules of law."

And placing their denial upon that ground, deny each and every of the allegations in said portion of said paragraph three of plaintiffs' bill of complaint, lastly hereinabove set forth.

Said defendants deny that said petitioners have a plain, speedy or adequate remedy in the ordinary course of law.

Further answering said bill of complaint said defendants allege that said bill of complaint does not state facts sufficient to entitle plaintiffs or any of them to any relief herein.

And further answering said bill of complaint said defendants allege that said bill of complaint does not set forth facts sufficient to constitute a valid cause of action in equity.

And further answering said bill of complaint said defendants allege:—

That the large majority of the females who are desirous of becoming graduate nurses, and who pursue a course of study and engage in training for the purpose of becoming graduate nurses are females under the age of twenty-one years:

That in order to become such graduate nurses, it is essential that each of said females pursue a course of study to fit her therefor, and at the same time acquire practical experience in the care and nursing of the sick and injured.

That said course of study so required to be pursued by said females occupies a period of at least three years, and in order to acquire at the same time said practical experience, said student nurses attach themselves to and pursue said course of study in hospitals. That said course of study and training requires said student nurses to attend lectures delivered at various times in the hospitals to which they are so attached, and in addition thereto to devote a large
30 number of hours each week in the study of subjects relating to the profession of a graduate nurse. That said student

nurses are also required in said hospitals to keep in order and clean the rooms occupied by them, to make their own beds, and to take care of a number of other rooms located in such hospital, of which she has charge.

Said student nurses are also required to assist in the preparation and to bring to the patients confined in such hospital, their food, and to assist in caring for such patients. In addition thereto said student nurses are required in some of said hospitals to remain on duty visiting the rooms and wards in which patients confined in said hospitals are located, and assisting in the care of such persons from ten to fourteen hours each day. That unless the actual hours of duty of said student nurses are restricted to eight hours per day and to forty-eight hours per week, so that student nurses cannot be compelled to work for more than said eight hours per day and forty-eight hours per week, the health of said student nurses as a class will be undermined and endangered.

Wherefore, said defendants pray judgment of this Honorable Court that plaintiffs take nothing by their said suit, and that defendants have a recovery judgment for their conditions.

ALBERT T. ROCHE,
WALTER J. BURPEE,
Attorneys for Defendants.

(Endorsed:) Filed Nov. 11 1913. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

31 At a Stated Term, to wit, the November Term, A. D. 1913, of the District Court of the United States of America in and for the Northern District of California, Second Division, held at the Court-room, in the City and County of San Francisco, on Monday, the 5th day of January, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable William C. Van Fleet, District Judge.

Equity. 48.

WM. B. BOSLEY et al.
vs.
JOHN P. MCLAUGHLIN et al.

Order Dismissing Bill in Equity of Petitioners and Plaintiffs and Rejecting Offer of Testimony by Plaintiffs.

This cause having come on regularly for trial this 5th day of January, 1914, petitioners appearing therein by their attorneys, and defendants also appearing by their attorneys. Petitioners offered to prove that "all the allegations of fact set forth in the bill were true; That the fact that a woman was a graduate nurse merely showed that she had completed a course of study for the treatment of the sick, but that the course of study which a woman must take

for that purpose was not prescribed by law or fixed by custom, but was such as any hospital or training school might, in the discretion of its governing officers see fit to prescribe; that the difference between a graduate nurse and an experienced nurse is a difference of technical education only, and that there is no standard by which this difference can be measured; that graduate nurses working in
32 and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers to assistants to the medical staff."

The court thereupon stated that at the prior hearing on the motion for an interlocutory injunction in this case, the court had held that the complaint did not state a cause of action, and that the Court considered it unnecessary to devote time to the hearing of evidence.

Thereupon it was ordered that the offer of petitioners to introduce evidence in support of the allegations of the bill be, and the same is denied. It was further ordered that the bill of complaint be dismissed, and a decree be signed, filed and entered accordingly, to which said orders petitioners were allowed exceptions.

33 At a Stated Term, to wit, the November Term, A. D. 1913 of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the Court-room, in the City and County of San Francisco, on Monday, the 5th day of January, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable William C. Van Fleet, District Judge.

No. 48. In Equity.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Decree.

This cause having come on regularly for trial this 5th day of January, 1914, and the court having denied to petitioners the right to introduce evidence offered in support of the bill, and having ordered that the case be dismissed;

Now Therefore it is ordered, adjudged and decreed, that the petitioners take nothing by their action, and that the bill of complaint be and is hereby dismissed with costs to defendants.

WM. C. VAN FLEET, *Judge.*

(Endorsed:) Filed and Entered January 5th, 1914. Walter B. Maling, Clerk.

34 In the United States District Court, for the Northern District of California, Second Division.

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Petition for Order Allowing Appeal.

To the Honorable Court, above entitled:

The above named petitioners, William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, and each of them, considering themselves aggrieved by the judgment made and entered in the above entitled action on the 5th day of January, 1914, by which said judgment the bill of petitioners in the above entitled action was dismissed, and final judgment rendered against them, do hereby appeal from said judgment to the Supreme Court of the United States, for the reasons and upon the grounds specified in their assignment of errors filed herewith,
35 and pray that their appeal be allowed, and that a transcript of the record, proceedings and papers upon which said offer was made and entered as aforesaid, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., and that a citation issue as provided by law; and that the proper order touching the security to be required of them to perfect their appeal be made.

And your petitioners allege that the defendants have admitted in their answer to the bill herein that they will enforce during the pendency of the appeal herein the Act of the Legislature of the State of California, approved June 12, 1913, the enforcement of which the bill sought to enjoin; that the enforcement of said Act will compel your petitioners, William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital" to expend during the pendency of this appeal a large part of the trust fund in their possession to carry on the work of the hospital over and above the present cost of running the hospital; that the expenditure of such a sum from the trust fund will greatly curtail the efficiency

of the hospital and greatly limit and decrease the charitable work for the performance of which the trust was established; that with all respect to your Honorable Court, your petitioners believe there is a serious question as to the constitutionality of the said act of the Legislature of the State of California; that if the said act should be declared unconstitutional by the Supreme Court of the United States on this appeal, that your petitioners will have expended a large part of the trust fund in order to comply with an invalid statute, and your petitioners, as such Trustees, will have no redress or remedy to recover said money so expended, and the trust fund would be greatly depleted, and the purposes of the trust greatly impaired by
36 the enforced compliance with an invalid statute during the pending of this appeal;

Wherefore, your petitioners, the Trustees of "The Samuel Merritt Hospital" further pray your honorable court for a stay of proceedings, and for an order restraining the defendants herein from enforcing directly or indirectly the said Act of the Legislature of the State of California, until the final disposition of this appeal.

CHARLES S. WHEELER &
JOHN F. BOWIE,
Solicitors for Petitioners.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

William B. Bosley, being first duly sworn on oath, deposes and says; that he is one of the petitioners named in the foregoing petition for order allowing appeal; that he has read the within and foregoing petition for Order allowing appeal, and knows the contents thereof, and that the matters and things therein stated are true; except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

WM. B. BOSLEY.

Subscribed and sworn to before me this 8th day of January, 1914.

ALICE SPENCER,
Notary Public in and for the City and County of San Francisco, State of California.

The petition granted, and the appeal allowed upon giving bond conditioned as required by law, in the sum of $1,000.00.

Dated, this 8th day of January, 1914.

WM. C. VAN FLEET, *Judge.*

(Endorsed:) Filed Jan. 8 1914. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

37 In the United States District Court for the Northern District of California, Second Division.

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Assignment of Errors.

Now, on this 8th day of January, A. D. 1914, come the above named petitioners, by their solicitors Charles S. Wheeler and John F. Bowie, Esqs., and aver that the judgment made and entered in the above entitled cause on the 5th day of January, A. D. 1914, dismissing the bill in equity of the said petitioners praying for an injunction, is erroneous and unjust to the petitioners, and file with their petition for appeal from the said judgment, the following assignments of errors:—

1. That the court erred in dismissing petitioners' bill in equity in the above entitled cause.

2. That the judgment dismissing said bill in equity, seeking to enjoin the enforcement of the Act of the Legislature of the
38 State of California, approved June 12, 1913, and fully set forth in said bill, is erroneous for each of the following reasons:

(*a*) The said act of the Legislature if put into execution will deprive the above named petitioners of the right of freedom of contract guaranteed to them by the 14th amendment to the Constitution of the United States.

(*b*) That said Act of the Legislature if enforced will deny to the above named petitioners, and to each of them, the equal protection of the laws guaranteed by the 14th amendment to the Constitution of the United States, and

(*c*) That the said Act of the Legislature if enforced will operate to deny to the said petitioners, and to each of them, the equal protection of the laws guaranteed by the 14th amendment to the Constitution of the United States, in this, that the said Act is based upon a classification which bears no just or proper relation to the object of the law, and is merely arbitrary.

3. That the Court erred in rejecting the offer of the petitioners to prove that all the allegations of fact set forth in the bill were true; that the fact that a woman was a graduate nurse merely showed that she had completed a course of study for the treatment of the sick, but that the course of study which a woman must take for that pur-

pose was not prescribed by law or fixed by custom, but was such as any hospital or training school might, in the discretion of its governing officers, see fit to prescribe; that the difference between a graduate nurse and an experienced nurse is a difference of technical education only, and there is no standard by which this difference can be measured; that graduate nurses working in and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers or assistants to the medical staff.

39 Wherefore, petitioners pray that the said judgment dismissing their bill in equity herein be reversed, and for other relief meet in the premises.

CHARLES S. WHEELER &
JOHN F. BOWIE,
Solicitors for Petitioners and Appellants.

(Endorsed:) Filed Jan. 8 1914. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

40 In the United States District Court for the Northern District of California, Second Division.

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Bond on Appeal.

Know all men by these presents:

That we, William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, as principals, and Massachusetts Bonding and Insurance Company as surety, are held and firmly bound unto John P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, in the full and just sum of One Thousand Dollars ($1,000.00) to be paid to the said John P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor

41 Statistics of the State of California, and W. H. L. Hynes, District Attorney of Alameda County, State of California,

their attorneys, successors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, by these presents.

Signed, sealed and dated this — day of —— A. D. 1914.

Whereas, lately at a regular term of the District Court of the United States, for the Northern District of California, sitting at San Francisco in said District, in a suit pending in said Court between William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, as complainants and petitioners, and John P. McLaughlin Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California, W. H. L. Hynes, District Attorney of Alameda County, State of California, as defendants, a judgment was made against the said petitioners, dismissing the bill of the petitioners in said action, and the said petitioners having obtained an order allowing appeal, and restraining the defendants, and each of them, from proceeding to enforce, directly or indirectly, against William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital" the act of the Legislature of the State of California set forth in the bill of complaint, and filed a copy thereof in the Clerk's office of the said Court to reverse the said order in the aforesaid suit, and said order further provid-
42 ing that there be issued a citation directed to the said defendants, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, District of Columbia, within sixty days after the date of said Citation, on the — day of —— 191- next,

Now, therefore, the condition of the above obligation is such that if the said William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

PETER L. WHEELER, [SEAL.]
S. H. BUTEAU, [SEAL.]
WM. B. BOSLEY, [SEAL.]
ETHEL E. NELSON, [SEAL.]
Principals.
MASSACHUSETTS BONDING AND INSURANCE COMPANY, [SEAL.]
By JOHN H. ROBERTSON,
Attorney in Fact,
By FRANK M. HALL,
Attorney in Fact,
Surety.

The foregoing bond on appeal is hereby approved this 9th day of January, 1914.

WM. C. VAN FLEET, *Judge.*

(Endorsed:) Filed Jan. 9 1914. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

43 In the United States District Court for the Northern District of California, Second Division.

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Præcipe.

To the Clerk of said Court.

SIR: Please make up, print and issue, in the above entitled cause, a certified transcript of the record, upon an appeal allowed to the Supreme Court of the United States, sitting at Washington, D. C. from the judgment and Decree in the above entitled action made and entered on the 5th day of January, 1914, whereby it was adjudged and decreed that the above petitioners take nothing by said action, and that their bill of complaint be dismissed, with costs to defendants, the said transcript to include the following:

44 Bill In Equity Of Petitioners;
Answer of Defendants;
Order dismissing bill in equity of petitioners and plaintiffs, and rejecting offer of testimony by plaintiffs.
Decree;
Petition for allowance of appeal, and order endorsed thereon;
Citation;
Assignment of errors;
Bond On Appeal;
Præcipe for transcript.

All of the above to be certified under the hand of the Clerk and the seal of the Court.

CHARLES S. WHEELER &
JOHN F. BOWIE,
Solicitors for Petitioners and Appellants.

Due service and receipt of a copy of the within Præcipe this 16th day of January 1914, is hereby admitted.

ALBERT T. ROCHE,
WM. J. BURPEE,
B. FISHER,
Attorneys for Defendants.

(Endorsed:) Filed Jan. 16 1914. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

45 In the District Court of the United States in and for the Northern District of California.

No. 48. In Equity.

WILLIAM B. BOSLEY et al., Petitioners,
vs.
JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California, Defendants.

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing forty-four (44) pages numbered from 1 to 44 inclusive, to be full, true and correct copies of the bill of complaint, answer, order dismissing bill, decree, petition for order allowing appeal, order allowing appeal, assignment of errors, bond on appeal and præcipe for record, in the above entitled cause and that the same constitutes the record on appeal to the Supreme Court of the United States, from the decree, signed filed and entered in the above entitled cause.

I further certify that the cost of the foregoing transcript of appeal is $30.60, that said amount was paid by the attorneys for the plaintiffs, and that the original citation issued in said cause is hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this 29th day of January, A. D. 1914.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk of United States District Court in and for the Northern District of California.

46 Original.

In the United States District Court for the Northern District of California (Second Division).

In Equity. No. 48.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a Citizen and Resident of This District, Petitioners,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, Composing and Constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, Defendants.

Citation and Restraining Order.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to John P. McLaughlin, Labor Commissioner of the State of California; John Kean, Deputy Labor Commissioner of the State of California, and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, defendants, Greeting:

You are hereby notified that in a certain case in Equity, in the United States District Court in and for the Northern District
47 of California, wherein William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," and Ethel E. Nelson, a citizen and resident of this District, are complainants and petitioners, and John P. McLaughlin, Labor Commissioner of the State of California, John Kean, Deputy Labor Commissioner of the State of California and John J. Tobin, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California; W. H. L. Hynes, District Attorney of Alameda County, State of California, are defendants, an appeal has been allowed the said complainants and petitioners therein to the Supreme Court of the United States.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, D. C., within sixty days after the date of this citation, to show cause, if any there be, why the judgment appealed from should not be corrected, and speedy justice done to the parties in that behalf.

Pursuant to the order allowing an appeal, and directing the issuance of citation in the above entitled cause, you are restrained, pend-

ing such appeal, from enforcing directly or indirectly against the petitioners and appellants William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital," the provisions of the Act of the Legislature of the State of California, approved June 12, 1913, a copy of which is set forth in the bill of complaint on file in this cause.

Witness the Honorable William C. Van Fleet, Judge of the United States District Court for the Northern District of California, this the 9th day of January, A. D. 1914.

WM. C. VAN FLEET, *Judge.*

Due service and receipt of a copy of the within Citation and Restraining Order this 10th day of January 1914, is hereby admitted.

W. BURPEE,
B. LISTON,
ALBERT T. ROCHE,
Attorneys for Defendants.

[Endorsed:] In Equity. No. 48. In the United States District Court for the Northern District of California. William B. Bosley, etc., et al., Petitioners, vs. John P. McLaughlin, etc., et al., Defendants. Citation and restraining order. Original. Filed Jan. 10 1914. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk. Charles S. Wheeler and John F. Bowie, Attorney- for Petitioners, Nevada Bank Building, Room 609, San Francisco.

Endorsed on cover: File No. 24,056. N. California D. C. U. S. Term No. 905. William B. Bosley, Peter L. Wheeler and Samuel H. Buteau, Trustees of "The Samuel Merritt Hospital" and Ethel E. Nelson, appellants, vs. John P. McLaughlin, Labor Commissioner of the State of California et al. Filed February 16th, 1914. File No. 24,056.

112

No. [redacted]

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1912.

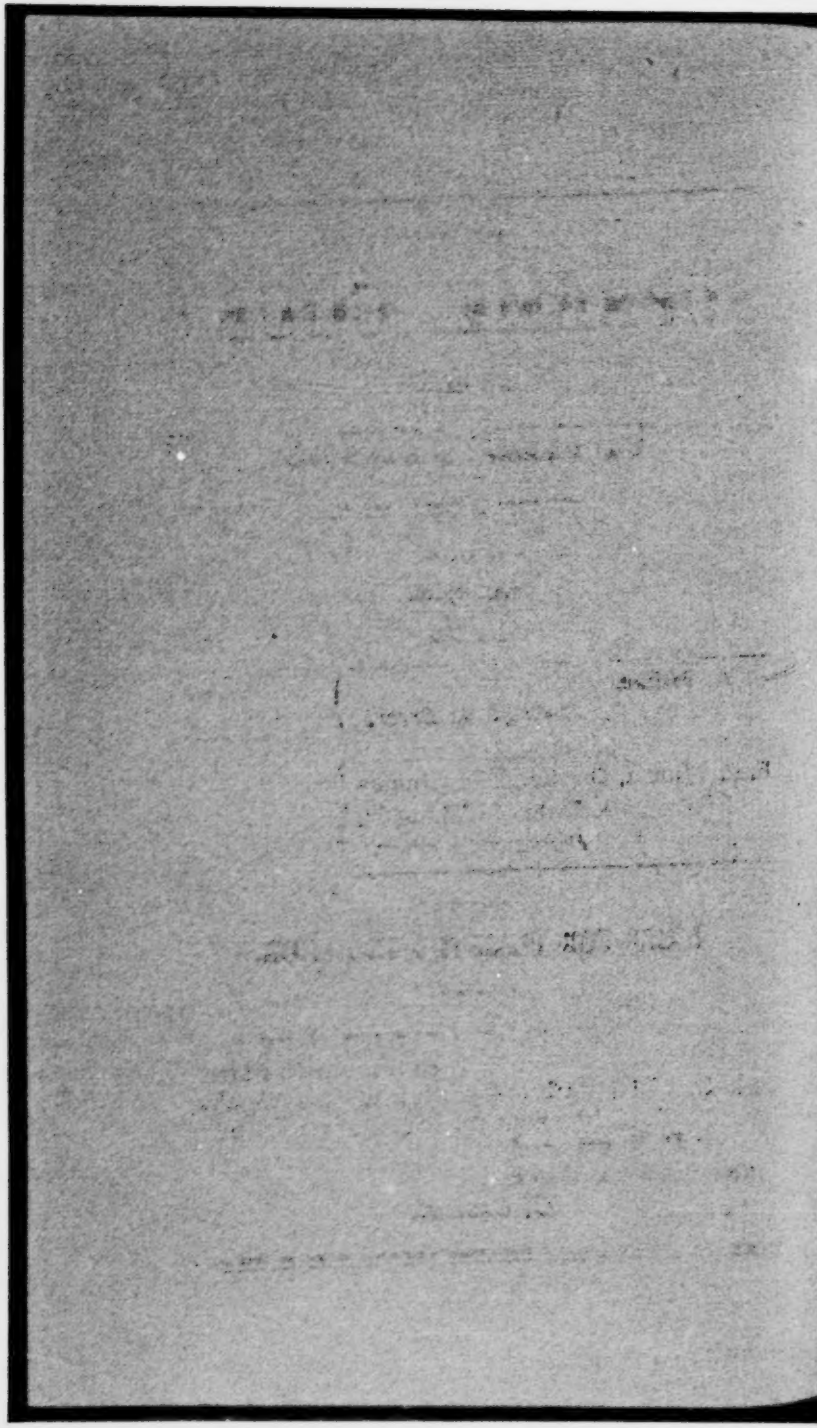
Office Supreme C
FILE
JUN 1
JAMES D. M

[redacted]

F. A. Miller,
Plaintiff in Error,
vs.
F. P. Wilson, Sheriff of the County of Riverside, State of California,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

FLINT, GRAY AND BARKER,
By FRANK P. FLINT,
Title Ins. Bldg., 5th & Spring Sts., Los Angeles,
Attorneys for Plaintiff in Error.
FRANK P. FLINT, and
HENRY S. VAN DYKE,
Of Counsel.



INDEX.

	Page.
Argument (as to due process of law, etc.) (I.)	15-88
Argument (as to discrimination) (II.)	88-122
Conclusion	122
Statement of Case	3
Statute of California Cited	11

INDEX OF CASES CITED.

Allgeyer v. Louisiana	93
16 Am. and Eng. Ency. of Law	102
Bailey v. People	109
Barbier v. Connolly	94
Beale on Innkeepers, etc	102
Bell's Gap R. R. v. Penn	94
Beveridge v. Lewis	98
Bierly's Police Power, etc	22
Brannon's "Fourteenth Amendment"	23
Budd v. Hancock	96
Burcher v. People	83
City of Pasadena v. Stimson	115
Commonwealth v. Beatty	53
Commonwealth v. Hamilton	51, 53, 84, 122
Commonwealth v. Riley	58
Connolly v. Union Sewer, etc	93, 114
Cotting v. Godard	92
Cromwell v. Stephens	102
22 Cyc.	102
Darcy v. Mayor, etc., of San Jose	95
Dougherty v. Austin	95
Fay v. Pacific Improvement Co	100
Ga. Stats., 1889	119
Gulf, etc., Ry. v. Ellis	94
Hellman v. Shoulters	96
Holden v. Hardy	52, 119
Jacobs, Matter of	69
Jentzsch, Ex parte	103
Johnson v. Goodyear Mining Co	97
Krause v. Durbrow	97
Kelly v. Excise Com'rs	102
Kubach, Ex parte	38
Lawton v. Steele	23, 31
Lochner v. New York	37, 39, 40, 49, 103
Lodi v. State	96
Low v. Rees	77, 94
Martin, Matter of Application of	39, 115
Morgan, In re	39, 74
Martin v. State Ins. Co	100, 102
Muller v. Oregon	29, 56, 84, 122, 125
People v. City of Chicago	64
People v. Elerding	58, 61
People v. Williams	69
Pinkerton v. Woodward	100
Ritchie v. People	56, 63, 78
Ritchie v. Wyman	22, 42
Russell's Police Powers, etc	22
Spencer, In re	115
State v. Buchanan	56
State v. Goodwill	93
State v. Peel Splint Coal Co	93
Seattle v. Smyth	38
State v. Newman	67
State v. Somerville	18, 58, 64
Sinking Fund Cases	30
Slocum v. Bear Valley Irrig. Co	97
Sohncke, Ex parte	96, 98, 113
Wenham v. State	55
Westerfield, Ex parte	98
Yick Wo v. Hopkins	29, 124

(23,541.)

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1912.

No. 966.

F. A. Miller,
Plaintiff in Error,
vs.
F. P. Wilson, Sheriff of the County of Riverside, State of California,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The plaintiff in error (hereinafter designated as petitioner), by writ of error, has brought to this court for review a decision by the Supreme Court of California refusing to discharge the petitioner on writ of *habeas corpus*. No evidence was introduced at the hearing before the Cali-

fornia Supreme Court and it was assumed on the argument that the facts stated in the petition were true. The only question before this court is whether the California statute under which petitioner was arrested and held for trial is constitutional. The statute is known as the "Women's Eight Hour Law." The asserted conflicts with the state constitution will, of course, not be urged in this court.

It is alleged in the petition for writ of *habeas corpus* filed in the California Supreme Court [Trans. p. 1] that F. A. Miller, petitioner, while engaged in his duties as proprietor of the Glenwood Hotel at Riverside, California, was arrested by the sheriff of Riverside county (hereinafter designated as respondent), upon a certain charge for committing an alleged misdemeanor, set forth in a certain complaint, a copy of which is set forth in the petition, [cf. Trans. pp. 1-7], the alleged offense being that said petitioner had employed in said hotel one Emma Hunt, a female person, to work as an employe in said hotel for the period of nine hours a day; that thereafter, after due proceedings, petitioner was tried and acquitted; that an appeal was taken to the Superior Court of Riverside county, and petitioner was again acquitted, [Trans. p. 2]; that thereafter petitioner was again arrested in the same justice's court for a similar offense and is now held for trial [Trans. p. 3]. Thereafter, upon the filing of said petition

in the California Supreme Court, a writ of *habeas corpus* was issued out of said court [Trans. p. 20] and formal return thereto made by the sheriff of Riverside county [Trans. p. 18]. After hearing before said Supreme Court petitioner was remanded to the custody of the sheriff, [Trans. p. 18], where, subject to the action of this court on these error proceedings, he is now held. The opinion of the California Supreme Court is set forth at pp. 21-28 of the transcript. Thereafter, petitioner applied for a rehearing, which was denied and said judgment became final [Trans. pp. 28-29]. Thereafter error proceedings were perfected carrying the matter to this court [Trans. pp. 29-46].

It has been and is admitted, for the purposes of these proceedings, that petitioner did, as charged, employ a female for more than 8 hours; and that petitioner had been acquitted, on the first arrest, solely on the ground of the unconstitutionality of the statute [Trans. p. 11]. In the California statute, as we shall see, no distinction is made as to females under or over the age of minority, but it is admitted that the female employed was over the age of minority. On the hearing before the state Supreme Court it was assumed that the general conditions and incidents of female employment in hotels are known to everyone and that any court will take judicial notice of them. In addition, the following specific

facts appear in petitioner's original petition and in the answer to the sheriff's return:

> "It is expressly provided in said statute that the limitation to eight hours a day and forty-eight hours a week therein specified shall not apply to the employment of females in harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, whereas it is a fact that the character of work generally and usually performed by females employed in hotels is much less arduous or calculated to injure the health and well-being of females than that expressly permitted by said statute to be performed by said specified exception; that hotel-keeping is an important and substantial business occupation in California and provides a livelihood for thousands of women, and that the foregoing discrimination is a substantially damaging one, inasmuch as it is impossible to employ females profitably in hotels for many purposes for less than nine hours a day or fifty-four a week;
>
> "That said statute is unconstitutional and particularly is in violation of the terms of Sec. 1 of Art. 1 of the constitution of the state of California and of the fourteenth amendment to the constitution of the United States of America for the following, among other reasons: That said statute is not, either by its express terms or by its necessary effect, a reasonable or justifiable withdrawal of and exception to the right of private contract reposed in citizens and residents of the state of California by said constitutional provisions, and the prohibitions contained in said statute are not reasonable and are not necessary for the welfare of females employed in many of the employments

therein specified, and particularly not in hotel employments; that it is necessary to the profitable employment of women in several important occupations in hotels that they be employed for at least nine hours a day and for more than forty-eight hours a week; that the nature of such occupation is such that it is necessary for the hotels to have many women so employed in attendance and subject to call for a period of nine hours a day and for at least fifty-four hours a week, though as a fact the actual occupation of a great number of females so employed in their duties seldom exceeds seven hours a day; that the usual and ordinary occupations of females employed in hotels, to-wit, as chambermaids and as waitresses, is an occupation much less arduous in its character and much more healthful in its surrounding circumstances than in the majority of employments for women on which said statute places no restrictions on the right of private contract." [Trans. pp. 5-6.]

The following facts appear also from petitioner's answer to the sheriff's return:

"Your petitioner is engaged as manager, in conducting and operating a hotel, to-wit, said hotel hereinbefore referred to, which hotel is a public hotel open to the public for their accommodation for all members thereof who may present themselves as guests, being provided with the means of paying for their accommodation and in a fit and proper condition to be received as guests; that said hotel, in common with numerous other hotels throughout the state, employs many female employees in the operation thereof, the larger portion thereof being employed either

as waitresses or as chambermaids, though numbers are employed in other work; that the employment of said females is in all respects a lawful business, and the work of said female employees is in all respects healthful and not arduous; that it is necessary to said hotel, as to all other hotels employing females in similar work, that the employment of each female shall last for at least nine hours a day, and that said females, or at least a large number of them, should similarly be employed for seven days a week in most cases; that the period per day of actual work performed by such female employees covers only a portion of said period of at least nine hours per day, but that by reason of the reasonable demands of the public for its accommodation as guests the hours when such female employees must be subject to call equals at least nine hours per day, and seven days per week in most cases; that there are also many females employed in your petitioner's hotel and in many other hotels in the state whose duties are entirely of a different character from those of waitresses and chambermaids, some being employed as managers and assistant managers, as cashiers, as bookkeepers, as stenographers, as housekeepers, and in many and divers kinds of work; and that the work of all of them is lawful, healthful and not arduous, and their duties all require that such employees shall be on duty, at least nine hours per day and, in most cases, seven days per week, reasonable holidays and vacations excepted;

"That said act, if valid, would operate upon all of said female employees and upon their employers, regardless of the divers and varied nature of their work, and regardless

of the fact that said work of various kinds is all healthful and not arduous; that, also, if valid, said act would constitute an unreasonable and unnecessary interference with the freedom of such women to contract for their labor and so earn a livelihood as to them might prove possible and best; that such restrictions as are in the act prescribed are unduly and unreasonably burdensome, both upon the said female employees and upon their employers; that, if said act were enforced, large numbers theretofore employed in the aforesaid occupations, as in many other occupations, would lose their employment by reason of the fact that it would no longer be possible to hotels to employ such female employees in such occupations; that the restrictions in the act provided are in no wise necessary to the health of such female employees;

"That furthermore said act, particularly as it refers to the females employed in hotels, contains no classification of such female employees according to the nature of their work, whether based on natural distinctions in the nature of the various kinds of work or on constitutional distinctions, and said restrictions are in all respects unreasonable, unnecessary to the health of said female employees, unduly burdensome to both employers and employees, and not justifiable as an exercise by the state of its police power;

* * * * * * *

"That it is expressly provided in said statute that the limitation to eight hours a day and forty-eight hours a week therein specified shall not apply to the employment of females in harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, whereas it is a fact that the char-

acter of work generally and usually performed by females employed in hotels is much less arduous or calculated to injure the health and well-being of females than that expressly permitted by said statute to be performed by said specified exception; that hotel-keeping is an important and substantial business occupation in California and provides a livelihood for thousands of women, and that the foregoing discrimination is a substantially damaging one, inasmuch as it is impossible to employ females profitably in hotels for many purposes for less than nine hours a day or fifty-four hours a week;

"That furthermore said act is discriminatory in that it restricts the hours of employment of females in hotels, whereas it does not similarly or at all restrict the hours of the employment of females in boarding houses, lodging houses or rooming houses, although the duties of female employees in all of them are identical, and the conditions as to healthfulness and arduousness of work are the same;

"That said Act is discriminatory also in that it restricts the hours of employment of large numbers of females in hotels whose occupations, to-wit as managers, or assistant-managers, or cashiers, or book-keepers, or stenographers, is identical with that of large numbers of females identically employed in other branches of business on which said act places no restrictions;

"That said Act is discriminatory also in that the work of waitresses and chambermaids in hotels is identical as to all its conditions with that of domestic servants employed in private homes." [Trans. pp. 14-15.]

There is herein no controversy as to the fact that the statute constitutes a serious detriment to petitioner and to the great bulk of hotel-keepers in California. It is merely argued against us that it is a necessary sacrifice, as the legislature has held, for the public health.

The statute, which constitutes as to its validity the sole issue in this proceeding, is easy to quote entire—it being as short as the bed of Procrustes. It reads as follows:

"Chapter 238.

An act limiting the hours of labor of females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company; compelling each employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female to provide suitable seats for all female employees and to permit them to use such seats when they are not engaged in the active duties of their employment; and providing a penalty for failure, neglect or refusal of the employer to comply with the provisions of this act, and for permitting or suffering any overseer, superintendent, foreman or other agent of any such employer to violate the provisions of this act.

(Approved March 22, 1911.)

The people of the state of California, represented in senate and assembly, do enact as follows:

Section 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

Sec. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

Sec. 3. Any employer who shall require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintend-

ent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than $50 nor more than $200, or imprisoned in the county jail not less than five nor more than thirty days, or both fined and imprisoned."

And said act took effect May 22, 1911.

[Trans. pp. 3-4.]

SPECIFICATION OF ERRORS.

Inasmuch as all of the errors assigned consist in the alleged unconstitutionality of the statute, we assume that this specification of errors may be a merely formal one. There are eight specific errors under this head given [Trans. pp. 38-40], but the following three sufficiently indicate the points relied upon:

"II.

"By the record herein it appears that the Supreme Court of the state of California erred in deciding that the statute specifically referred to in paragraph I hereof was not in violation of the constitution of the United States and in violation of that part of the fourteenth amendment of the constitution of the United States which provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

"III.

"By the record herein it appears that the Supreme Court of the state of California erred in deciding that the statute specifically referred to in paragraph I hereof was not

in violation of the constitution of the United States and in violation of that part of the fourteenth amendment of the constitution of the United States which provides that no state shall deprive any person of liberty or property without due process of law."

"IV.

"By the record herein it appears that the Supreme Court of the state of California erred in deciding that the statute specifically referred to in paragraph I hereof was not in violation of the constitution of the United States and in violation of that part of the fourteenth amendment of the constitution of the United States which provides that no state shall pass any law denying to any person within its jurisdiction the equal protection of the laws."

[Trans. pp. 38-39.]

The two former we shall argue together under the first (I) division of our argument, and the last under the second (II) division, that of discrimination.

ARGUMENT.

I.

The Restrictions Imposed by the Act Upon Women and Their Employers as to Their Freedom of Contract in Certain Designated Employments are Not Reasonably Necessary, and are Not Such a Necessary Invasion of Freedom of Contract as Will be Justified Under the Sanction of the Police Power or of Any Other Constitutional Power.

Before opening our argument upon the merits of the matter, it is perhaps proper to first explain just why we have come so far as this court in this case when already the tendency to restrictive legislation as to women's employment and the disposition of some of the state courts to uphold it to every degree has convinced many that it is a *chose jugee.* We personally do not think so. We think, on the contrary, that such legislation has already edged over the danger line but that now is exactly the time for this court to outline some limits to this dangerous legislation. As we shall see later in our historical review, the original precedents have, through a process of loose repetition, come to be used blindly and without a fresh examination of their original limitations. In one of the later cases we shall see, in fact, that the court admits practically no limits to the discretion of the legislature in this field,—that the sex of women furnishes the only needed justifica-

tion or limitation. And, as to the increasing volume, the daily papers are now filled during legislative days with accounts of every sort of proposed specific for the supposed ills of the times,—minimum wage laws, compulsory insurance, a complete liability on the part of employers irrespective of the negligence of the injured employee, etc. The danger of all this is obvious enough to one who has at all studied the development of government in this country. Once the public has grown used to an uncurbed indulgence in interference with private rights, it will be difficult, not to say dangerous, to attempt to bring it back to salutary limits. A season of reform has set in with uncommon severity. Every citizen wants to reform—his neighbors' affairs. It costs no self-denial, not even that of careful consideration. Unchecked by the courts, paternalism, socialism and universal governmental regulation would sweep over us, for the process of passing such laws is so easy, and it has the charm of benevolence without its cost. The man in the street car is coming into his own. The immediate and desired object of each of these popular edicts is singly thought of, as if each law was unrelated to every other. We need not mention that we hear of many women losing employment through such benevolent interference; we need not mention that the opinion of the public as a whole demands no such far-reaching laws; we need not argue the

demoralizing effect of constant evasions of such laws. They are all matters of common knowledge, but the perception of such things cannot be brought home by argument. Their appreciation depends upon the point of view. Therefore, we shall confine ourselves to two concrete instances.

In the state Supreme Court, in one of the briefs for the law, we found the following: "It may be remarked that in Germany, France, Holland, Belgium and Denmark, all having written constitutions (and fairly stable governments), the *only* criticism as to constitutionality and its *final* determination are made in the *legislature*, save for a limited veto in the executive in certain cases. While it has long been established that the American courts have this power, nevertheless in determining the limits of its exercise it is well to remember that its existence is by no means a *sine qua non* of stability in governmental institutions." Precisely! No argument for the law could be more consistent or logical or more damaging to its maker. Waiving the fact that the most *stable* government known to history, China, has recently come over to approve a system of checks and balances upon legislative omnipotence, and the further fact that liberty—individual liberty—has been supposed to rank with us as somewhat higher than stability even, we admit the appropriateness of counsel's argument. That is, the question is, as to constitutional re-

straints,—Have we "changed all that"?—Are constitutional restraints grown obsolete with us?

The other concrete point is found in the significant utterance of Mr. Justice Chadwick in his concurring opinion in one of the latest decisions upholding such legislation (cf. *State v. Somerville, post*). He says: "On the other hand, the Supreme Court of Nebraska has held that, although a law limiting the hours of labor as to men will not be sustained, unless health and safety require it, *most any kind of a law will be sustained as to woman, because of her sex and dependent relation.* * * * Authorities almost without number might be referred to. But it is not cases, *but the principle, to which I refer,* and *until the Supreme Court of the United States decides otherwise I am willing to hold—for I believe it is the only consistent thing for a court to do*—that in all cases pertaining to the police power the legislature is supreme, unless" etc. The qualification that follows, in the light of his point of view, is manifestly futile. The point of view, the attitude, is what is so significant. We hardly need further urge the necessity of this court's going back to first principles, impartially and freshly, orienting the whole field, and laying down some guiding principles.

We turn now to discuss the specific act.

Certain notable features of the act will be observed at once. The limitation as to duration of

employment is twofold: first, the work of women in one day must not be more than eight hours; second, it must not be more than forty-eight hours in one week. If, therefore, the woman works in a hotel, for example, where there is a seven day week, the restriction becomes obviously still more burdensome as to a day's work. (We assume throughout our brief that regular holidays and rest-days at reasonable intervals may properly be prescribed.)

Next, it will be observed that both by implication and expressly, many employments in which thousands of women are engaged are not intended to be included within the prohibitions of the act,—for example, clerks, stenographers, and all women assistants in all professional employments, domestic servants, and many other classes, among the implied exceptions, and all women employed in the harvesting, etc., of any fruit or vegetables —for we take it that any fruit or vegetable in its raw state is "perishable"—as the express exception. This particular aspect of the act will, however, be treated sufficiently under the head (II) of discrimination.

Again, it will be observed that, so far as the classification of employments goes, it is not defined by the nature of the employment itself but by the nature of the business in which the employment occurs. For example, a stenographer in a store is limited to eight hours a day; a sten-

ographer in a lawyer's office, doing precisely the same kind of work, is not. It is exactly as if an act were to provide an eight-hour day, not for men engaged only in underground mining, but for all men employed by a mining company,—which would include the bookkeepers, etc. (And here, as in so many aspects of the act, there would have been no difficulty in a proper classification: for example, in manufacturing or mechanical employments it would have been easy to except "clerical" employments.) This aspect of the act we shall also consider sufficiently under the head of discrimination.

A further feature of the act is that the various employments enumerated have no one common characteristic (except that they are all perfectly lawful). Danger, arduousness, conditions of light and air,—on these points (the sole justification of any legislative shortening of hours being on the ground of *health*) there is absolutely nothing in common, and no pretense to make it appear that there is.

The act is very brief. It purports to cover in about one octavo page a large part of the whole field of business employment of women,—various, complicated and comprehensive as that field now is. It lays down one uniform, unyielding rule for all and for the most utterly different conditions of occupation. It bears not one single mark of investigation of the various facts in-

volved, or consideration of any widespread opinion on the subject.

Finally, the act carried restriction much farther than any previous act had attempted—to eight hours a day and forty-eight hours a week for many important employments never conceded to be unhealthful, dangerous or arduous. We shall see that precedent was against such an extreme invasion of the liberty of contract.

Passing now to a consideration of the act as a whole, the petitioner further contends that this statute, in limiting the hours of labor for women in hotels to forty-eight hours per week is unreasonable and violates the well-known provisions of the XIV amendment already specified.

On what principle can such a manifest invasion of the freedom of persons not incompetent or in a state of tutelage be justified? It will be conceded at once that the only justification could be the police power,—and that the only branch of the police power at all relevant is that called the public *health.* Where limitations to a ten-hour day as to women in certain employments have been sustained as constitutional, they have been sustained on the ground that the good health of women is necessary to the good health of the community,—and that legislation necessary to safeguard the health of any considerable class or classes of them is justified by the needs of the community as a whole. (Cf. *Ritchie & Co. v.*

Wyman, 214 Ill. 509, 91 N. E. 695.) There are *many* distinctions between the few laws on the subject that have been sustained and the one at bar (with the exception of two very late statutes, which we shall discuss later). We must therefore discuss the question largely on principle, using the most nearly analogous cases as a guide. But we shall try to refer to only that part of that vast and vague field, the police power, which concerns exclusively the public health and more particularly the health of women.

Bierly's Police Power State and Federal, p. 13, lays down the general rule as follows: "Its (the police power's) exercise must be reasonable and not confiscatory, like a war power, and *must be absolutely necessary to the public health* or safety." (Quoting People v. Co., 9 Mich. 285; Smiley v. McDonald, 42 Neb. 5; R. Co. v. State, 47 Neb. 549.)

Russell's Police Powers of the State, p. 34, says:

> "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally as distinguished from those of a particular class, *require* such interference; and, second, that the means are reasonably *necessary* for the accomplishment of the purpose and *not unduly oppressive upon individuals*. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or

> impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts." (Italics ours.)

The foregoing statement of the conditions for the exercise of this police power is in exactly the same words as those used by Justice Brown in *Lawton v. Steele*, 152 U. S. 133. This last comes as near to a generally accepted definition of the police power as can be found. Brannon in his "The Fourteenth Amendment," referring to it (p. 172) says: "In Lawton v. Steele is an opinion by Justice Brown which I consider one of the very best statements of the nature and extent of the police power to be found anywhere."

Brannon's learned work also cites (p. 202) the following as still a leading case:

> "In another West Virginia case an act prohibiting persons engaged in mining and manufacturing, and interested in selling merchandise, from selling to employees at greater percent than to others, was held contrary to the Fourteenth Amendment, because it was class legislation, and in interference with the freedom of contract, both in employer and employee. The court said: 'The statute is a Procrustean bed. It consigns all sizes and conditions to the same measure of treatment, regardless of their differences. It excludes all freedom in trade and all considerations of mutual benefit, and even charity. If the employer sells goods to the fam-

ily of some friend in indigent circumstances at less than cost, then, under this statute, he must sell at the same price to all his employees. But it is unnecessary to illustrate the vices, the crudities and the injustice of the statute. That it is an attempt to do for private citizens, under no physical or mental disability, what they can best do for themselves, is apparent. It selects miners and manufacturers as a class, and denies to them privileges which are not only proper and legitimate in themselves, but also to some extent necessary and unavoidable in the conduct of business; privileges which concern private affairs solely, and which are enjoyed by all other classes of citizens. It is an attempt on the part of the legislature to do what, in this country, cannot be done; that is, prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the right of the employer and the employee. Such acts violate principles of liberty, as heretofore explained (p. 00). They deny equality before the law. They violate the state constitution; they violate the fourteenth amendment." (Citing *State v. Fire Creek Co.*, 33 W. Va. 188, 25 Am. St. R. 891.)

In construing the act of the legislature herein involved, this court will unquestionably make the usual precedent *prima facie* presumption in favor of its constitutionality. But as potent as this rule of construction is the other—that, where the right of private contract is invaded by the legislature, the statute must have a clear and necessary tendency to promote some specific public good, to-

wit, the public health,—and be *necessary* to it. All of these last elements must co-exist to sustain the invasion of private right. In glancing over the many adjudications on this troubled sea of police legislation it is readily observable that where the legislation is sustained the former rule of constitutional construction is emphasized almost as if it were the only rule applicable. Because of this over-emphasis by way of argumentative support in certain opinions, where the point was very close until finally decided, it is found easy to cite general statements of the limits of the police power which are, after all, one-sided and misleading. For this reason, to merely quote from various adjudicated cases will still leave us matching quotations. We must establish some generally accepted principles to guide us before putting out to sea.

We concede that legislation reasonably necessary to protect the health of women workers is a justifiable exercise of the "police power,"—and we concede that in certain arduous employments a certain reasonable restriction of hours may be justifiable. We concede also that if members of this court, sitting as members of the legislature, could have *reasonably* believed *under all the facts* that such legislation was necessary, then such legislation must be sustained by the members of this court. But we do not concede, if such legislation *might* in some way conduce to the health

of working women, and any reasonable man *might* so think, that that is enough to sustain this invasion of private liberty. Making clothes indoors is not so healthful as playing golf,—and the more the hours of working women are shortened of course the more opportunity is afforded them for amusing or exhilarating occupations. Clearly, such latter benefit to the health of working-women would not justify an exercise of the police power. Something more is required. The restriction must be reasonably necessary. The normally healthy woman in a normally healthy occupation is entitled to work a full day in order to earn the corresponding income,—e. g. in hotels. And, the rights of an employer to procure such employees, though not controlling, is of course of weight. It follows then, inevitably, that the only permissible test of such legislation must be "Is such limitation of the hours of labor of women reasonably *necessary* to the health of such women?" And this brings us to a further principle of construction that must be observed—that the test of whether such limitation of the hours of labor of women is reasonably necessary to *such* women (and the test must be applied to *such* women, and not to women of other and different conditions and circumstances) necessarily is, "What are the conditions and circumstances surrounding *such* women?"—that is, the particular class or classes of women at whom the legislation

is directed. It is, of course, a matter of common knowledge that the various employments of women in these progressive days, though not so numerous as those of men, are yet among themselves as various and different from each other. The occupation of a woman in a steam laundry or in a clothing factory is very arduous work; and the work of a waitress in the great majority of hotels is comparatively easy and healthful work. This is a fact, and it is a fact known among all reasonably informed men. And, if a member of the legislature does not recognize this, then he is ignorant either of facts of common knowledge or of the constitution—and neither justifies legislative invasion of private liberty. Therefore, as we say, the legislature must observe this requirement—that the limitation of hours as to particular classes of women shall be reasonably *necessary* to the *particular conditions* of such *particular classes,*—and, if the particular conditions of one class are different from those of another class, then what will justify interference with the one will not justify interference with the other. Obviously, then, a fixed uniform standard of restriction for various classes of widely varying conditions is, on its face, unreasonable and unjustifiable.

But there is another requirement,—and one not less important because it's so often overlooked.

Why should a member of the legislature be held only to matters of common knowledge when he is passing laws of regulation as to business occupations? Suppose it is a question of compelling railroads to adopt a certain safety appliance newly invented?—which is a perfectly justifiable exercise of the police power. Such legislation depends absolutely for its constitutionality upon a fact, and a fact not at all of common knowledge at that time, to-wit: that that appliance is effective for its purpose, for promoting safety. It might be, *as a fact*, that the appliance was useless for that purpose, although the common belief was to the contrary. And suppose, then, that it could be easily shown, by proper investigation and proof, that the appliance was perfectly useless (though expensive): could it then be argued that because there was nothing on the face of the statute to show that it was perfectly useless—that it must therefore be conclusively presumed that the legislature had exercised reasonable discretion in the matter, merely because it was not a matter of common knowledge that the appliance *was* useless? Therefore it follows that there is this requirement too—that is, that, in the last analysis, and irrespective of any presumptions in the matter, the *facts* themselves must justify the legislative interference with freedom of contract. And on this point there is a common confusion. There is a *prima facie* pre-

sumption that the legislature's law is constitutional. But this presumption goes merely to the question of general legality. In the investigation of a fact—or a set of facts constituting a condition—which forms the basis of the legislature's interference,—here the presumption does not intervene. That is, there is no presumption as to the facts. We have never heard it claimed, in a case of legislative restriction of a perfectly *lawful* business, that there is any presumption from the mere fact that the legislature restricts that the facts themselves are what the legislature evidently had assumed they were. The *prima facie* presumption does not help the assumed facts in that way. In the famous laundry and similar Chinese cases that went up from this same state of California to the Supreme Court of the United States (Yick Wo v. Hopkins, etc.) this court indulged no presumption in favor of the facts as impliedly found by the legislative department's action. For the legislative department had assumed in those cases that the laundries were, in fact, (to the extent they were restricted) nuisances. This court held otherwise. And there was in those same Chinese cases a clear majority of public opinion in favor of the unconstitutional legislation. Evidently it was not the kind of "widespread belief" required by *Muller v. Oregon, post.* But more of that later.

This brings us to the last principle involved

that we need specially mention here. When the occupation is admittedly lawful and not a nuisance, interference therewith by the legislature must positively appear reasonably necessary. And this is so in face of the authorities that respondent will cite. Respondent will cite many adjudicated cases to the effect that "every possible presumption is in favor of the validity of a statute, and that this continues until the contrary is shown beyond a rational doubt." This wording is taken from the prevailing opinion of this court in the *Sinking Fund Cases,* 99 U. S. 718. In the various adjudicated cases cited by respondent to the same effect we find only one of them to be an opinion by this court,—the foregoing Sinking Fund opinion. Now a number of pertinent comments may be made on the language quoted from that opinion. It occurs as a general preamble to the opinion of the Chief Justice. It is hardly more definite than much of the language in the Declaration of Independence. It is supported by no citation of authority. It occurs in a case that in no way involves the police power, and therefore its vague and indefinite terms are of little use in this instant case in which so dissimilar principles are involved. It was the opinion of a divided court, Justices Strong, Bradley and Field each filing strong dissenting opinions, thus seriously impairing its weight. Finally, if there were a conflict, it would be conditioned and

modified by the later and universally approved opinion of this court in *Lawton v. Steele*, 152 U. S. 133, a case involving the police power, and in which the language is more definite and is aided by its special reference to the scope of the police power. The proper rule of construction, therefore, is undoubtedly that which we have drawn from *Lawton v. Steele, supra*, in our preceding discussion.

We shall later discuss more specifically the precedents. It is enough to add at this point that serious confusion has been caused by the frequent use as controlling authority of adjudicated cases involving the limitation of hours of *children*. The distinction is important. The freedom of contracting by women, in California as in many of the states, is as free and is regarded as sacredly as that of men. The freedom of children to contract is of course not so regarded, by law or by public opinion. There is therefore no invasion involved, as to children, of a legal, and now commonly considered natural, right. The right of the legislature to make laws *necessary* for the health of women is conceded. But such laws must be reasonably *necessary*. Whereas, as to children, the limitation is not so strict: as there is in their case no such violation of their contractual rights involved, it is enough that the legislative restrictions are for their benefit. The prin-

ciples of construction as to the two kinds of laws are, therefore, in a vital particular, different.

It cannot be denied, then, that legislation shortening the hours of women in diverse lawful employments, when questioned as constitutional, can and should be subjected, irrespective of any general and antecedent presumptions as to the law, to two tests:

(a) Is the particular invasion of private rights involved reasonably *necessary* to the health of *each of the classes* of women affected thereby?

(b) What are the *facts* as to any single class of women affected thereby? Or, where it is a subject of common and everyday knowledge, is there any "widespread and long continued belief" on the subject?—and, if so, does the legislative action fairly observe its limits?

We do not intend to ask for a narrow and technical application of such tests. We know that no law—for a law must be general and uniform in its application—can help but do some individual injustices in individual cases. But, for that very reason, the more general the law, the more reasonable should be its provisions,—it should be designed for the demands of the normal citizen, of a normal body and a normal character. So where a statute does injustice to entire and considerable classes—easily ascertainable classes, and which can readily be segregated, classes where every member differs, and in exactly the

same way, in her occupation from those in other classes—then such statute, when the fact appears, must be held to be an unreasonable invasion of the liberty of private contract. Even if knowledge of the subject of the litigation is difficult of access the same test must still be applied where the facts can be shown at all. The only difference in the application would then be that on disputed or unilluminated points the presumption would be in favor of the legislature's action—a fiction of constitutional construction but an absolutely necessary one. But here, in the case of this statute, the subject matter of legislation, taken as a whole, is one of general and common knowledge. The broad lines of distinction are well known. We know, for example, that between the work of a woman operating machinery, which requires uninterrupted attention and is of an arduous character, with no healthy moving about and change of position and location,—with all the conditions of air, sun-light, etc., incident to such sedentary occupations,—between such employment in factories and the work of a waitress or a maid in a hotel there is a whole pole of difference. There is no question here of disputed or fine distinctions. The necessary facts, as to this statute at least, are well-known. Therefore, there is no occasion here for any presumption arising from the impossibility of knowledge on the subject. For in our statute what do we

find? We find one of the most comprehensive, diverse and varied fields of economic activity, the employment of women,—a field in which one perfectly distinct class of business activity differs by a whole pole from another,—covered in a small page and a half of crude legislation. It is the bed of Procrustes with a vengeance. Some classes of employment are injured as much as others might be benefited—with the additional distinction, however, that where the benefits to some are hypothetical, the damage to others is immediate, practical and easily provable. It should be obvious, on general principles alone, that no such Procrustean law could be just, when applied alike to utterly different conditions. And the information for the use of the legislature was easily accessible, if there was need of information. We need mention only a few sources. The United States government distributes free its nineteen large volumes, published as late as 1910, constituting its "Report on Condition of Woman and Child Wage-Earners in the United States." There is in these volumes every possible source of information for intelligent and reasonable humanitarian legislation on woman workers. The United States government also distributes numerous other publications on the same subject, including detailed reports on foreign conditions, experiments and legislation. In England, where legislative experimentation has continued on this

subject for many years, the information is particularly full and convincing. Even a cursory inspection of a part of this available material makes its lessons obvious—that a limitation which may be beneficial to one class is utterly unjust and unreasonable when applied to another class. Nothing in England was found in the beginning more disastrous to the progress of humanitarian legislation for women than the misguided general benevolence which thinks to regulate a complex field of human conduct by a few brief lines of amateurish legislation. This is so stated by those brilliant women investigators who have published probably the best discussion upon the subject, "The Case for the Factory Acts." So well is this danger understood that the English Factory Acts provide specifically and differently for the different classes of employment for women. For example, it is specifically and differently provided as to the total hours of employment, as to the consecutive hours, as to interruptions for meal hours, as to the hours for opening and closing work, as to holidays and as to the substitution of one holiday for another where the work cannot be interrupted at a given time, as to the number of successive days of employment, as to what employments demand work on Sundays, and as to weekly maximums where daily or other special restrictions would prove unreasonable. New York and other of the older states have partially

availed themselves of this material. To draft such an intelligent law is not a Herculean task; it requires only some honest work and common sense. It should seem obvious to any intelligent person, for instance, that the classification should be on the basis of the *character of the work performed by the employees affected* and *not* on the basis of the *employer's* business,—for practically all business nowadays employ stenographers and bookkeepers (many of whom are women),—and a stenographer or bookkeeper in a factory has precisely the same duties and work as one in the professional employments unaffected by the act. Yet the legislature, by its action, admits that stenographers and bookkeepers in many lines of business, e. g., professional offices, etc., do not need restriction of hours, though practically all are employed from 8:30 a. m. to 5:30 p. m. at least.

But what was done? Of all laws on the subject that of Nebraska was followed. The law was so short and simple. Nebraska, an almost exclusively agrarian state! However, our legislature did make one change and two additions. The change was from a ten-hour day to an eight-hour day—which alone is enough to make it unconstitutional. For an eight-hour limitation cannot possibly be justified in many employments of women. The two additions were equally fatal: It expressly excepted fruit canning and picking,

employments much more arduous than many of the restricted employments, but in which continuous employment for a longer day was less necessary than in some of the restricted employments; and it provided that seats should be supplied for women in *all* employments, whereas the subject of the statute was the health of women in the employments specified in the act (as in the Nebraska statute was recognized by providing only for them). This last objection, however, need not now be considered by this court as it concerns only an alleged violation of the state constitution.

We say it is a fact, then, and also is a matter of common knowledge, that the limitation to eight hours a day and particularly the limitation to forty-eight hours a week is unnecessary and unreasonable as applied to hotels and many of the other enumerated employments. To hold such legislation unconstitutional is to promote humanitarian legislation for women, for it makes possible such humanitarian legislation as is consistent with their liberty and their means of livelihood; while, on the contrary, the present law, as to many employments, by an unnecessary curtailment of their usefulness, and therefore of their earning capacity, does more harm than good.

In the case of *Lochner v. New York*, 198 U. S. 45, 61, 49 L. Ed. 937, the Supreme Court of the United States held that the hours of labor of

men (except in dangerous occupations) could not be restricted by legislation; and we understand this to be the doctrine enunciated in *Ex parte Kuback*, 85 Cal. 274.

In an opinion of the Supreme Court of Massachusetts sent to the senate of that state on the 15th day of May, 1911, in response to an order therefor, upon the provisions of the bill to constitute eight hours a day's work for public employees, it is said:

> "It was decided by the Supreme Court of the United States in Lochner v. New York, 198 U. S. 45, that a state cannot limit a citizen in the exercise of his right to make contracts and to use his powers by the enactment of a statute forbidding his employment for more than eight hours in a day. This judgment of our highest federal court is the law of the land, binding upon the courts and citizens of this commonwealth. It rests upon the ground that there is nothing in the ordinary labor, by men of full age for more than eight hours a day, that calls for prohibition in the interest of the public health, the public safety, the public morals, or the public welfare."

This doctrine is affirmed, so far as we can ascertain, by every court in the union having occasion to pass upon the question, (except in certain cases on the women's employment acts hereafter discussed, which seem to us bad on principle as on precedent). Among other cases is *Seattle v. Smyth*, 22 Wash. 327, 79 Am. St. Rep. 939;

and *In re Morgan*, 26 Colo. 415, 77 Am. St. Rep. 269, wherein the authorities are collated and the subject very exhaustively treated.

It is only when an occupation possesses such characteristics of danger to health of those engaged therein as to justify the legislature in concluding that the welfare of the community demands a restriction, that the hours of labor for men may be limited by legislative enactment.

Matter of Application of Martin, 157 Cal. 51, 55.

In *Lochner v. New York, supra*, it is said in the opinion of the court:

> "It might be safely affirmed that almost all occupations more or less affect the health. *There must be more than the mere possible existence of some small amount of unhealthfulness to warrant the legislative interference with liberty.*"

Are not the same principles and the same reasoning applicable in considering legislation limiting the hours of labor for women? Certainly it cannot be said that all occupations open to women "possess such characteristics of danger to the health of those engaged therein as to justify the legislature in considering that the welfare of the community demands a restriction." If there are occupations possessing no such characteristics of danger to women, then as to such occupations, women's liberty to contract cannot be invaded—

that is, until the length of hours shall seem clearly and positively harmful. A mere possible belief to that effect is not sufficient. Of course, unreasonable hours in any occupation would not be the *best* thing for a man—but that would not warrant the legislative interference with his right to contract. Likewise, unreasonably long hours would not be the *best* thing for a woman in any occupation—but that would justify a legislature's merely limiting the employment to hours *absolutely necessary* to protect her. The principle justifying a legislature's right to interfere with a woman's right to contract is precisely the same as it is as to a man's freedom—it is the right to legislate when the employment becomes *dangerous*. In the case of a woman the danger point comes earlier and in more employments—but the danger point should be equally clear in each case. And that limitation must be as equally regarded by the legislature. Otherwise a woman has no freedom of contract in any occupation. Once admit any other principle of interference—for example, the merely benevolent and paternal instinct to legislatively manage another's business for her own good—and the barriers would all go down before the flood of legislation. As was said in the Lochner case:

> "If this be a valid argument and justification for this kind of legislation, it follows that the protection of the federal constitution from undue interference with liberty of

person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power."

It follows that the provisions for the protection of personal rights in the XIV amendment have no meaning as to women, if any legislation which may be said to tend to make women healthy, must be valid as health laws, enacted under the police power. If because of her sex, and without the need of other specific justification, a woman's hours of labor may be restricted in all occupations, then she possesses no freedom of contract or personal liberty—for her sex is then the sole measure of the legislature's power; and she may, despite the XIV amendment, be disqualified from entering upon or pursuing a lawful business vocation or profession.

If there are any occupations of women that are healthful, which are they? We affirm that if there is any occupation that may be considered healthful, it is housework, the natural vocation of women; and we submit that the court will take judicial notice that most of the work of women employees in a hotel is identical in character with ordinary housework (except that it is, as a rule, shorter).

But if this court should hold that legislation limiting the hours of labor of women in hotel work—that is, in public housework—is justifiable to promote her physical well being, and therefore

that her right to liberty of person and freedom of contract must yield to such claimed power of the state to legislate for public health and the welfare of the race, we still submit that the restriction of the hours of labor must be reasonably necessary, based upon the character of the occupation of the employee (not of the employer), and not arbitrary or fixing the same limits for all occupations regardless of the nature of the work.

In the division of labor between the sexes, in most civilized countries, women have had the charge of the household, and their natural vocation has been to do housework. It was not till within the last one hundred years that women, in this country, have followed to any considerable extent any other pursuit. Changed industrial conditions have opened up new avenues of employment for women, so that they are now largely employed in factories and in mercantile and mechanical establishments, and in other forms of employment too numerous to mention.

Commenting on the work of women in establishments "whose product is produced by machinery, or whose employees work with machinery, or the pace at which such employees work is set by other employees who work with machinery," the Supreme Court of Illinois in *W. C. Ritchie & Co. v. Wyman*, 214 Ill. 509, 91 N. E. 695, says:

"We think that women thus situated while at work are under a pressure and spur which is more likely to drive them to over-exertion when exhausted by long-continued effort, and thereby to impair their health, than are their more favored sisters likely to be driven who are engaged in an employment which is not forced at all times up to the limit of production by the agencies of steam, electricity, or other motor power when applied to machinery."

The court will take judicial notice that in *no* employment can a woman work eighteen hours a day without injury to her health. The court will also take judicial notice that in *many* vocations the great majority of women may work ten hours per day, without injury to their health. What are reasonable limitations and regulations must in the last resort be determined by the courts. The constitution which guarantees to women as well as to men protection in their life, liberty and property, may be invoked in their behalf against unreasonable laws restricting their constitutional rights, and the courts are open to them for that purpose. When a law restricts a woman's hours of labor in a given vocation, there must be some limit beyond which it would be an infringement upon her constitutional rights to go. It would be unreasonable and absurd to limit the hours that a woman may labor in ordinary pursuits to two hours per day. Ten hours was the lowest limit fixed in the earlier statutes, and then

only for certain occupations, *where the employment was likely to be* particularly arduous and exacting. When the employments are different, the limits are necessarily different. The statute, by the nature of the case, must not be wholesale and undiscriminating. The limit, of course, would depend upon the character of the occupation. If in any given occupation the court may take judicial notice that the limit fixed by a statute is unreasonable, then it would be the duty of the court to declare such statute unconstitutional. In the statute before the court, a woman is limited in her employment in an hotel to an average of six hours and fifty-two minutes per day in a seven days' week. The work performed by women in an hotel is of the same character as work done in the home—the work of the chambermaid and waitress is of the same kind as that performed by the housemaid. Such work must be attended to every day (reasonable holidays always being provided). The work of the woman employee in a hotel is generally no more onerous than work done by her in a private family—in a majority of cases less so, for the majority of homes, of course, have only one servant. In an hotel the dining room is open for periods of from two to three hours each. By a division of labor obtaining in most hotels doing any considerable business, the waitresses wait upon the guest at the table and nothing else, the chambermaid does

the chamber work and nothing else. In the small hotel with little patronage a woman may do both kinds of work, but her work then is practically that of a domestic doing general housework. It is true that a hotel proprietor would prefer to keep his dining room open to commence at a later hour in the morning and close at an earlier hour in the evening (for our act, of course, takes no account of the leisure for waitresses between meals when there may be slight duties but no hard work), but if he did, his hotel would fail—some of the public breakfast early; some late; some dine early; some late. But the act takes no account of the nature and demands of the business. Moreover, it must be kept in mind that the country hotels, as well as the small hotels of every kind, greatly exceed in number the very large ones, and though the employees in large hotels may, in aggregate number, more nearly equal the aggregate number of women employees in small hotels, the fact that the number of small hotels greatly exceeds the number of large hotels is a vital factor. For the rights of the hotel itself and of its proprietor must not be unreasonably invaded. This point is particularly to be considered in the matter of providing various shifts for employees, as to hours—in small hotels where the number of women employees is small, it is very difficult to provide many alternates to attend to Sunday work. Thus a large number of

hotels—small hotels—are, by the present statute, unreasonably burdened.

And as for the health of waitresses themselves, it is a matter of history and general knowledge that the grandmothers and great grandmothers of the men of this century worked twelve hours a day, and were, in frequent instances, the mothers of families of ten or more children. These women not only did their own housework, but did the spinning, knitting and perhaps did the sewing by hand, yet many of these women, under such conditions, lived to be eighty years of age and more; and the women who are living to-day eighty years of age are women more often than otherwise who worked at their household work twelve or more hours per day—a living demonstration that doing housework ten or twelve hours a day is not injurious to the average woman. It is the idle woman, who does little physical or other work, that is early broken in health; and not the housewife of the middle class who does her own work, busied about her household work often more than twelve hours per day. Or, so we might argue, if it were necessary. But is it?

If a law is passed limiting a woman's hours of labor in given employments for the mere purpose of giving her leisure, and it is unnecessary to protect her health, such law would be in violation of the fourteenth amendment, just as a law passed

limiting the hours of a man's labor in an ordinary employment would be in violation of such amendment. Yet, is not such the case with our statute?

An hotel is obliged to be open for business seven days in a week, unlike the other businesses mentioned in the statute, and the daily work differs greatly in volume, some days or hours very little being required of an employee.

If the health of women is not imperiled by working ten hours in hotels in Oregon, Massachusetts, Nebraska, and other states, no reason will readily occur to the mind of the court why it should be disastrous to the women of California to permit them to work the same number of hours daily.

It seems to have remained to the legislature of this state to make the discovery that the public health of the people of the state demanded that no woman should be allowed to work, *in any capacity*, for more than eight hours in one day—or, what is a much more unreasonable restriction, for more than forty-eight hours in a week—in any hotel, telegraph or telephone office. We affirm that there is no published data or common knowledge justifying such a conclusion. This suggests to us a common confusion in many cases and briefs on this question. We find it a common argument that, in a given instance, a woman, by reason of her sex, may be unequal for a time to the demands of her employments; also, that

some women, not strong, cannot stand considerable demands on their strength. The fallacy of this fact as an argument is two-fold. As to occasional disabilities, shortening the hours to eight hours would not help—it is not the proper remedy. But, waiving that, the introduction of such a principle of interference would leave no limit whatever to legislative interference. It cannot be admitted as a justification for purposes of shortening hours for all women every day, any more than can the occasional sickness of a man justify legislative shortening of hours. As to a considerable number of women not having the necessary strength for what has always been regarded as a fair day's work, there is a still more important fallacy. The question, of course, is determined for legislative purposes by the average strength of the average, healthy, normal woman. The preventing of certain women undertaking employments they are unfitted for lies clearly without the range of legislative action. It follows that, in any inquiry into the reasonableness of legislative restrictions of women's employments, it must always be assumed that the women concerned are normally healthy women, normally fitted for the demands of their employments.

If some occupations are healthful for women—as many unquestionably are for most women—then in such occupations they should have the

same liberty to contract with reference to such vocations as men.

That unduly long hours of labor for women in arduous employments like laundries or manufacturing establishments are injurious to even the ordinary woman will be conceded. If eight hours' limitation applied to such occupations is reasonable—that is, if it stops at the point where the liberty of the woman to contract has been limited by the *necessity* of preserving her health—then it necessarily and logically follows that the same limitation in hours, when applied to an obviously less (and much less) arduous employment, commits so unreasonable a wrong upon the individual that it may be restrained by the courts. For the same test, i. e., what is necessary for the preservation of the health of women employees—must apply to *all* cases of restriction, if it applies to any. And, if the legislature once fixes such a limit in one class of employees—e. g., in arduous employments—it is at least fair to test the legislature's action in all cases, over which it assumes to place a restriction, by exactly the same standard. By such a test, then, we say again, the California statute is clearly unreasonable.

It was said by the United States Supreme Court in *Lochner v. New York, supra:*

> "It must, of course, be conceded that there is a limit to the valid exercise of the police power by the state. There is no dispute con-

cerning this general proposition. Otherwise, the fourteenth amendment would have no efficacy and the legislatures of the states would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health, or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the federal constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course, the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

"This is not a question of substituting the judgment of the court for that of the legislature. If the act be within the power of the state it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain: Is it within the police power of the state? and that question must be answered by the state."

Is this limitation of the hours of labor for women in hotels to an average of six hours and fifty-two minutes per day, for a seven days' week, a fair, reasonable and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of an individual to her personal liberty, or to enter into those contracts in relation to labor which may seem to her appropriate or necessary for her support?

The history of legislation and adjudication in this country on limitation of hours of employment for women is significant.

Commonwealth v. Hamilton Manufacturing Co., 120 Mass. 383, is the earliest case on the subject generally referred to. The provision of the statute there objected to reads as follows: "No minor under the age of eighteen years, and no woman over that age, shall be employed in laboring by any person, firm or corporation in any manufacturing establishment in this commonwealth more than *ten* hours in any one day," except in certain cases, and that "in no case shall the hours of labor exceed *sixty per week.*" The opinion, rendered in 1876, contains no citation of authority in point, the decision being based on the ground that *manufacturing* employments are admittedly arduous and dangerous to the health of women. It is to be noted that minors and

women are classed together and that it concerns a business never operated on Sundays. As to the misleading use of this case later made by other courts, through failure to consider that it was worded in view of the peculiarly ample powers given on the subject to the legislature by the Massachusetts constitution, we shall later more specifically call the court's attention.

Holden v. Hardy, 169 U. S. 366, decided in 1897, is always referred to as an authority on this subject, though it involved the limitation of hours of employment for men. The attack there was on the constitutionality of the Utah statute, and particularly the following clause:

> "Sec. 1. The period of employment of working men in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger."

The opinion by Mr. Justice Brown gives a valuable resume of the principles adopted by this court in construing the XIV amendment. As to limitation of hours of women, however, the court has only this to say:

> "In other states laws have been enacted limiting the hours during which women and children shall be employed in factories; *and while their constitutionality, at least as applied to women, has been doubted in some of the states*, they have been generally upheld."

The opinion then cites specifically the case of *Commonwealth v. Hamilton, supra.* It will be noted that the laws as to women here referred to are those only as to employment in factories—i. e., the most arduous and unhealthful of employments for women. The Utah legislation is thereupon sustained on the ground that underground mining, and smelting, are admittedly unhealthy and dangerous occupations. We may add that we, of course, concede throughout our brief that danger and unhealthfulness constitute a proper ground for legislative restriction. But that, because nine hours is more tiring than eight hours in a perfectly healthy occupation, the legislature may intervene, is a very different matter. To admit the latter as a ground for legislative interference would be to throw down all barriers—for, on what principle, then, would any limit to paternal and socialistic meddling be found? Every populistic wave of sudden feeling would have full sweep. It is idle to pretend that such gusts of unreasonable sentiment would not be dangerous in this country in the absence of constitutional restraints. We have not the traditions that take their place in older governments.

Commonwealth v. Beatty, 15 Pa. Sup. Ct., decided in January, 1900, involved the constitutionality of the following provision: "That no minor, (male or female), or adult woman shall be em-

ployed at labor or detained in any manufacturing establishment, mercantile industry, laundry, workshop, renovating works or printing office for a longer period than twelve hours in any day, nor for a longer period than sixty hours in a week." (The parenthesis is our own.) The court says:

> "It is a matter of history in our state this act of assembly is the result of extended legislative examination into the management of our varied industrial institutions, which has been conducted by legislative committees, and through our factory and mine inspection bureaus. * * * A progressive step was taken by the act of June 3, 1893, P. L. 276, by which a new department of the state government was created, namely, that of factory inspector. * * * With the light given by the results of the previous legislation on this important subject, the act under consideration was enacted."

The statute was held constitutional on the ground that it appeared to be a reasonable provision for the health of women in such employments.

We particularly call the court's attention to the fact that the aforesaid statutory restriction was the result of years of investigation and progressive legislation. A reading of the statute will make it clear, we think, that the Pennsylvania legislature was much better informed on the subject than was our California legislature. In fact our statute, in the light of California's previous neglect of the subject, appears by contrast as an

example of the violent and unreasonable doctrine characteristic of sudden converts. The Pennsylvania restriction is admittedly reasonable.

Wenham v. State, 65 Neb. 395, 91 N. W. Rep. 421, decided July 1, 1902, illustrates the next step in this progressive legislation. The legislative provision attacked read as follows:

> "Section 1. That no female shall be employed in any manufacturing, mechanical or mercantile establishment, hotel or restaurant in this state more than *sixty* hours during any one week and that *ten* hours shall constitute a day's labor. The hours of each day may be so arranged as to permit the employment of such females at any time from six o'clock a. m. to ten o'clock p. m., but in no case shall such employment exceed ten hours in any one day." (Italics our own.)

The question of constitutionality was there raised by a laundry, an admittedly arduous employment. Nothing was said by the court as to hotels. The important difference between the limitations of hours—60 hours a week and 10 hours a day in Nebraska, and 48 hours a week and 8 hours a day in California—is notable. The opinion contains no new light on the subject—it is based on the precedent cases and reasoning. The case is important only in that the statute involved was (except as to the number of hours) probably the ready-made model for our own California statute.

State v. Buchanan, 29 Wash. 604, decided Sept. 9, 1902, involved a statute practically identical with the Nebraska statute. In the opinion no reference is made to hotels. The reasoning is based solely on arguments applicable to manufacturing establishments. The court simply follows the authority and reasoning already cited. In referring to *Ritchie v. People*, 155 Ill. 98, (40 N. E. 454, 20 L. R. A. 79, 46 Am. St. Rep. 315), the court, after saying "we are not inclined to follow the reasoning of the court in that case, although it is well considered and ably presented," proceeds to say that it is in direct conflict with *Commonwealth v. Hamilton Mfg. Co., supra*, and *Holden v. Hardy, supra.* Nothing could be more incorrect. The latter case, as we've seen, referred only to a dangerous employment (underground mining), and the former only to a manufacturing establishment. Moreover, there was the vital distinction that the Illinois statute was an *eight* hour restriction and the Washington statute a *ten* hour one. Such confusion in the opinion leaves it of little weight.

Muller v. Oregon, 208 U. S. 412, decided Feb., 1908, is the authority now universally regarded as the one justifying restriction of hours of labor for women. It is therefore necessary to examine the precise scope of Mr. Justice Brewer's opinion, particularly as it is quoted frequently as if it ad-

mitted an unlimited power in the legislature on the subject. The statute there involved read as follows:

> "Sec. 1. That no female (shall) be employed in any *mechanical* establishment, or *factory* or *laundry* in this state more than *ten* hours during any one day."

There was there no restriction as to the week's employment, nor as to hotels. The offense charged was as to a laundry, an admittedly arduous employment. The opinion is brief, justifying the restriction solely on the ground of health. A careful inspection of the opinion will make clear that every justification mentioned by the learned justice is strictly referable to woman's physical and mental structure. The *limits* of the legislature's power, however, are not discussed. There is nothing in the opinion to justify such a statute as the California statute. The closing words of the opinion are significant:

> "For these reasons, and without questioning in any respects the decision in Lochner v. New York, we are of the opinion that it cannot be adjudged that the act in question is in conflict with the federal constitution, so far as it respects the work of a female in a laundry, and the judgment of the Supreme Court of Oregon is affirmed."

The scope of the Oregon statute was very limited—the California statute is wholesale.

It is at this point, as it seems to us, the barriers

have given way. The Muller case unluckily fixed and attempted to fix no limitations or guiding principles in this progressive, or retrogressive field. It was a natural result, therefore, that several decisions, coming at this time in rapid succession, should advance the position taken by advocates of this sort of governmental activity well beyond the previous lines. These decisions are *Commonwealth v. Riley*, 97 N. E. Rep. 367, a Massachusetts case decided on January 4th, 1912; *State v. Somerville*, 122 Pac. Rep. 324, a Washington case decided March 26th, 1912; and *People v. Elerding*, 98 N. E. Rep. 982, an Illinois case decided June 21st, 1912.

In *Commonwealth v. Riley, supra,* the constitutionality was involved of a Massachusetts statute limiting the time during which minors under the age of eighteen years and women may be employed in labor in *manufacturing and mechanical* establishments to 56 hours a week and to 10 hours each day, etc. The progress of legislation on the point is indicated by the opening paragraph of the opinion, as follows:

> "This is a complaint against the defendant as superintendent of the Davol Mills for employing a woman contrary to the provisions of St. 1909, c. 514, §48. This section limits the time during which minors under the age of 18 years and women may be employed in labor in manufacturing and mechanical establishments, to 56 hours in each week, and

> to 10 hours in each day, 'unless a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week,' except that where employment is by seasons the hours of labor in each week may exceed 56, but not 58, if the total number of hours of such employment in any year shall not exceed an average of 56 hours in each week for the whole year, excluding Sundays and holidays. St. 1911, c. 484, by which the basis of the labor for each week has been reduced from 56 to 54 hours, was not in force at the time of the offense here complained of."

The reasoning is the same as that already familiar to us. The court, however, makes two significant statements. The first is:

> "Arguments which would be decisive against its constitutionality if it applied to men as well as to women (Lochner v. New York, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937; Opinion of Justices, 208 Mass. 619, 622, 94 N. E. 1044), may be laid aside."

This is a clear admission that in the opinion of the Massachusetts judiciary there is not any principle in common to the two sexes which sustains this legislation. We had supposed up to this time that it was universally recognized that it was the identical principle in each case—the preservation of health—but merely, owing to the difference in physical constitution, a difference of standard and degree only.

Another significant declaration is the following:

> "In Ritchie v. People, 155 Ill. 98, 40 N. E. 454, 29 L. R. A. 79, 46 Am. St. Rep. 315, a statute limiting the hours of labor for women to 8 hours in each day and 48 hours in each week was held unconstitutional. On the distinction between the 8-hour and a 10-hour day, *a distinction which in reason seems rather difficult to maintain,* this case is treated plainly by the court as overruled in Ritchie v. Wayman, 244 Ill. 509, 91 N. E. 695, 27 L. R. A. (N. S.) 994, where an act restricting such labor to 10 hours in each day was upheld. But, however that may be, it is certain that the difference between an act of the legislature which permits women to labor in designated employment 56 hours in each week, and one permitting such labor for not more than 60 hours is so small as not to require a difference in the application of constitutional principles."

This also is another aspect of the advanced position now being taken by the proponents of this sort of legislation. Here is a court which solemnly tells us that there is no difference in principle between 8 hours and 10 hours—apparently irrespective of whether one is reasonable and the other is unreasonable. By identical reasoning there would be of course no difference in principle between 8 hours and 6 hours, and consequently no difference between 6 hours and 4 hours. Many words cannot make the point clearer. We are simply brought to the point

where no principle is left to determine what is a reasonable restriction of the right of women to contract. There is not a single sentence in the Riley case which recognizes or formulates any principle of constitutional restraint to the carrying of such legislation to its logical paternalistic result. That the case is not in point in the instant case because the restraint is confined to manufacturing and mechanical employments, admitted arduous ones, and that the limitation is to only 10 hours, does not affect the significance of the decision. What chiefly condemns the reasoning of the opinion (in its application to legislation of any state not having the peculiar constitutional principles of Massachusetts, particularly), is its explicit treatment of women and children, the latter being wards of the state, as being in exactly the same status.

People v. Elerding, supra, an Illinois case, is nearly as significant. That opinion also contains an indication of the rapid legislative progression along this line. In the opinion it is stated that in 1909 a law was passed limiting the hours that females might be employed in any mechanical establishment, factory or laundry to 10 hours during any one day but applying to no other line of employment or business. In 1911 the act was amended by the legislature so as to include a large number of other lines of employment. As

amended and in force since July 1st, 1911, the act provided, among other things, as follows:

> "That no female shall be employed in any mechanical or mercantile establishment, or factory, or laundry, or hotel, or restaurant, or telegraph or telephone establishment or office thereof, or in any place of amusement, or by any person, firm or corporation engaged in any express or transportation or public utility business, or by any common carrier, or in any public institution incorporated or unincorporated in this state, more than 10 hours during any one day."

The defendant in that case was the manager of a hotel and the facts were admitted. The following facts appeared:

> "Dolly Gertz was employed by the plaintiff in error in his hotel as a kitchen maid from 5:30 o'clock a. m. to 2:30 p. m., and from 5:30 o'clock p. m. to 7 p. m. Her duties during said hours were to wash dishes and kitchen utensils, to assist in paring potatoes, cleaning and preparing vegetables for cooking and fruits for the table. She was required to be in readiness for work during all the hours of her employment; but the time required to do the work assigned her did not exceed 7 hours in the aggregate. Gertrude Doering was employed in the said hotel as housekeeper from 7 a. m. to 7 o'clock p. m. She was charged with the responsibility of keeping the rooms in readiness to receive guests, cleaning rooms, making beds, changing linen, and caring for bed clothing. All of her duties were supervisory and no manual labor was required of her. Mary Jones was employed in the hotel from 7 a. m.

> to 7 p. m. Her duties were to show guests to rooms, receive payment of bills, keep the accounts of the hotel, and to occasionally take dictation of letters in shorthand from plaintiff in error and transcribe the same on a typewriter. Her duties during the hours of her employment did not actually require more than two-thirds of her time."

The foregoing facts are the same as exist in all hotels of course and are particularly in point in our case, which of course is a hotel case.

After speaking of the tendency of long working to impair the health of women, the court says:

> "To exactly what extent this may be so of females employed in hotels cannot, perhaps, be definitely known; nor is it necessary that it should be in order to sustain legislation reasonably limiting the hours of work therein." (Mr. Justice Vickers dissenting.)

And we agree with the court that neither definite, nor indeed *any* information, on the subject is necessary *if it may be assumed* that the regulation is a reasonable one. The court further cites the fact that many states have recently enacted such laws. But is this not an additional reason for laying down some principle of constitutional construction rather than for constantly evading it? The foregoing Illinois case contributes nothing new to the law. It is noticeable, however, that it does not repudiate the principles previously stated by the same court in *Ritchie v.*

People, 155 Ill. 98, 40 N. E. 459, 29 L. R. A. 79, 46 Am. St. Rep. 315—a case which we shall later cite as the only opinion we know in which the issue is fairly met. This last case also involves an Illinois 8 hour law and the Supreme Court held it unconstitutional as being an unreasonable restraint.

The *Elerding* case was later (Dec., 1912) approved by the Illinois court in *People v. City of Chicago*, 100 N. E. Rep. 194, with no additional reasoning.

State v. Somerville, supra, involved a statute substantially identical with the California statute at bar, including the 8 hour limitation. The opinion is substantially to the same effect as the California court's opinion and contains nothing new. The importance of this last opinion, however, is the concurring opinion of Mr. Justice Chadwick. Nothing could be more significant of the attitude of state courts recently on this question. After referring to the direct conflict between the decisions and particularly between that in the Holden case and that of the Supreme Court of Colorado in an exactly similar case, the learned justice proceeds:

> "On the other hand, the Supreme Court of Nebraska has held that, although a law limiting the hours of labor as to men will not be sustained, unless health and safety require it, most any kind of a law will be sustained as

to woman, because of her sex and dependent relation. Although varying in statement, this distinction runs through the cases. We find it in the decisions of the Supreme Court of the United States. The Bakeshop case is an example of the one view, and the Oregon case cited in Judge Crow's opinion is a type of the other. Authorities almost without number might be referred to. But it is not cases, but the principle, to which I would refer, and until the Supreme Court of the United States decides otherwise I am willing to hold—for I believe it is the only consistent thing for a court to do—that in all cases pertaining to the police power the legislature is supreme, unless the general application of the law does violence to the common knowledge of men, in which event a court might properly intervene. If there can be a difference of opinion, the judgment of the legislative body must prevail.

"I regret that my associates have deemed it necessary to uphold the exception to the law, in so far as it relates to women employed in fruit and vegetable canneries. I have grave doubt as to the validity of this exception. The exception, in so far as it applies to women employed in fish canning establishments, is upon surer ground, and would probably be sustained upon a direct attack. It was unnecessary to hold the exception, or any part of the exception, good in this case; for the defendant can have no interest beyond the body of the law. I am mindful of the legislative direction: 'If it shall be adjudicated that the foregoing proviso and exception shall be unconstitutional and invalid for any reason, an adjudication of invalidity of said proviso or any part thereof shall not affect the validity of the act

as whole, nor any part thereof.' Under the ordinary rule of interpretation as we have heretofore understood and applied it, such direction would not be held to influence the court in any way; the rule being that, if the exception were declared invalid, as appellant contends it is, the whole act would be avoided under the theory that the legislature would not have passed the act without the exception. Yet I see no objection to the legislature changing this rule of interpretation, and saying in terms to the courts that it was its intention to pass a law limiting hours of labor for women, and that it has made the act broad enough to include the excepted class, and if the courts, upon consideration of the law, find the exception to be without sustaining reason, the whole law shall not be declared bad because of uncertainty as to legislative intent; but the exception shall be regarded as if it had not been written. Although contrary to precedent and practice, the idea seems to me to be a wholesome one, and a right well within the power of the legislature. Granting this power to the legislature, I believe that the exception of women employed in fruit and vegetable canning establishments cannot be sustained, and that they can work eight hours, and no more. For the exception, in so far as it refers to them, is based, not upon the health, safety, or welfare of the women employees, but upon the necessities of the employer; that is to say, if he is engaged in putting up perishable stuff, and might lose money by putting on more employees, or working them the prescribed number of hours, he can violate the law at will. Laws, like the one under review, are passed and sustained on the theory that they better the condition of human be-

> ings. The exception makes the condition (perishability) of the fruit or vegetable the test, rather than the health, welfare or safety of the employee. The exception is unreasonable, and should not have our approval.
>
> "I know of no case, and I think none will be found, which would approve the application of the rule of police power in such a case. I concur in the holding of my associates that the defendant is within the law; but I would not have sustained the exception in the particular noted. I would hold the law to be general in its application, except in so far as women employed in fish-packing establishments are concerned."

The last two cases above cited sustain the discrimination in the statutes between hotels and boarding houses. The reasoning is so ineffective, however, that it is hardly worth analyzing. The question of this precise distinction, which is a vital one, is undoubtedly still open to original construction by this court and we therefore have discussed it on principle later in our brief.

The recent case of *State v. J. J. Newman Lumber Co.*, 59 So. Rep. 923, decided Nov. 18, 1912, is an excellent illustration of the lengths to which benevolent legislation will be upheld if this court does not interpose its authority. It concerned the violation of a recent Mississippi statute forbidding the employment of any person (men included) for more than ten hours a day in manufacturing or repairing establishments, except in

emergencies, etc. The Supreme Court of Mississippi cites as its only pertinent authority two dissenting opinions of this court, and Exodus. The latter authority is not only cited but seriously argued. This latter reference, particularly, is a strong temptation to irony in a commentator, but the subject is one of too grave consequence for that. We shall note merely that, according to the reasoning of the opinion, absolutely no restraint is left upon the legislature—an 8 hour law for men, or a 7 hour law for men, provided the legislature once held them necessary, would be immune from attack, on the reasoning employed. The barriers are all down.

The foregoing chronological review of the cases sustaining the restriction of hours of employment for women makes, more clearly than could any comment, the rapid progress of radical legislation on the subject and the apparent acquiescence therein of courts. It is perfectly apparent what will be the logical result of such progress. It seems to us high time to turn back to first principles. If the actual course of progress is not a straight line but is a zigzag, as the ancient philosopher said, consisting of extreme movements and partial reactions therefrom, then evidently we have reached the point where it is necessary to react somewhat. For upon looking back we shall find that the original cases by no means justify the modern applications thereof.

In the *Matter of Jacobs*, 98 N. Y. 98, 50 Amer. Rep. 636, in an opinion upon the constitutionality of a New York act purporting to improve the public health by prohibiting the manufacture of cigars, etc., in tenement houses, there is an excellent discussion of the limits of the police power; but, as it is somewhat long and its application is merely general, we can only refer to it generally. We quote, however, the two concluding sentences. After holding the legislation unconstitutional, the court says:

> "In reaching this conclusion we have not been unmindful that the power which courts possess to condemn legislative acts which are in conflict with the supreme law should be exercised with great caution and even with reluctance. But as said by Chancellor Kent (1 Com. 450): 'It is only by the free exercise of this power that courts of justice are enabled to repel assaults and to protect every part of the government and every member of the community from undue and destructive innovations upon their charter rights.'"

People v. Williams, 189 N. Y. 131, 81 N. E. 778, 121 A. S. R. 854, was a case involving a restriction upon the hours of employment of women, decided in June, 1907. The apposite portions of the opinion are as follows:

> "The provision of the labor law now in question is contained in section 77, which is entitled: 'Hours of labor of minors and women,' and reads that 'No minor under the age of eighteen years, and no female shall be

employed, permitted or suffered to work in any factory in this state before 6 o'clock in the morning, or after 9 o'clock in the evening of any day; or for more than ten hours in any one day except to make a shorter work day on the last day of the week; or for more than sixty hours in any one week, or more hours in any one week than will make an average of ten hours per day for the whole number of days so worked': Laws 1903, c. 184, sec. 2.

* * * * * * * *

"In my judgment, the determination below was correct. I think that the legislature, in preventing the employment of an adult woman in a factory, and in prohibiting her to work therein before 6 o'clock in the morning or after 9 o'clock in the evening, has overstepped the limits set by the constitution of the state to the exercise of the power to interfere with the rights of citizens.

* * * * * * * *

"In providing that 'no female shall be employed, permitted or suffered to work in any factory in this state before 6 o'clock in the morning or after 9 o'clock in the evening of any day,' she is prevented, however willing, from engaging herself in a lawful employment during the specified periods of the twenty-four hours. Except as to women under twenty-one years of age, this was the first attempt on the part of the state to restrict their liberty of person, or their freedom of contract, in the pursuit of a vocation. I find nothing in the language of the section which suggests the purpose of promoting health, except as it might be inferred that for a woman to work during the forbidden hours of night would be unhealthful. If the inhibition of the section in question

had been framed to prevent the ten hours of work from being performed at night, or to prolong them beyond 9 o'clock in the evening, it might more readily be appreciated that the health of women was the matter of legislative concern. That is not the effect nor the sense of the provision of the section, with which alone we are dealing. It was not the case upon which this defendant was convicted. If this enactment is to be sustained, then an adult woman, although a citizen and entitled as such to all the rights of citizenship under our laws, may not be employed, nor contract to work, in any factory for any period of time, no matter how short, if it is within the prohibited hours; and this, too, without any regard to the healthfulness of the employment. It is clear, as it seems to me, that this legislation cannot, and should not, be upheld as a proper exercise of the police power. It is certainly discriminative against female citizens in denying to them equal rights with men in the same pursuit. The courts have gone very far in upholding legislative enactments, framed clearly for the welfare, comfort and health of the community, and that a wide range in the exercise of the police power of the state should be conceded, I do not deny; but when it is sought under the guise of a labor law, arbitrarily, as here, to prevent an adult female citizen from working at any time of the day that suits her, I think it is time to call a halt. It arbitrarily deprives citizens of their right to contract with each other. *The tendency of legislatures, in the form of regulatory measures, to interfere with the lawful pursuits of citizens is becoming a marked one in this country, and it behooves the courts, firmly and fearlessly, to interpose the bar-*

riers of their judgments, when invoked, to protect against legislative acts plainly transcending the powers conferred by the constitution upon the legislative body.

"In this section of the labor law it will be observed that women are classed with minors under the age of eighteen years, *for which there is no reason. The right of the state, as parens patriae, to restrict or to regulate the labor and employment of children is unquestionable;* but an adult female is not to be regarded as a ward of the state, or in any other light than the man is regarded, when the question relates to the business pursuit or calling. *She is no more a ward of the state than is the man.* She is entitled to enjoy, unmolested, her liberty of person, and her freedom to work for whom she pleases, where she pleases and as long as she pleases, within the general limits operative on all persons alike, and shall we say that this is valid legislation, which closes the doors of a factory to her before and after certain hours? I think not. Without extended reference to the cases bearing upon the much discussed subject of the exercise of the police power, I need only refer to the recent case of Lochner v. State, 198 U. S. 45, where the supreme court of the United States had before it a case arising in this state under a provision of the labor law, which restricted the hours of labor for the employes of bakers. The argument there was, and it had prevailed in this court, that the legislation was valid as a health law under the police power; but the federal supreme court refused to recognize the force of the argument, and held, if such legislation could be justified, that constitutional protection against interference with the liberty of person and the freedom of con-

tract was a visionary thing. It was held that bakers 'are in no sense wards of the state. Viewed in the light of a pure labor law, with no reference whatever to the question of health, * * * the law * * * involves neither the safety, the morals nor the welfare of the public, and the interest of the public is not in the slightest degree affected by such an act.' It was also observed that *'there must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty.'*

"So I think, in this case, that we should say, as an adult female is in no sense a ward of the state, that she is not to be made the special object of the exercise of the *paternal* power of the state, and that the restriction here imposed upon her privilege to labor violates the constitutional guaranties. In the gradual course of legislation upon the rights of a woman in this state, she has come to possess all the responsibilities of the man, and she is entitled to be placed upon an equality of rights with the man."

It will be noted in the foregoing opinion that the New York court recognized the present strong tendency of legislatures to pass regulatory measures on this subject, and recognized the correspondingly strong attitude of the courts to safeguard the freedom of citizens from paternalistic meddling and violations of constitutional rights. The opinion also calls particular attention to the principle that a woman is not a ward of the state, like a minor, any more than is a man. It is of course indisputable that the tendency, and a per-

fectly legitimate tendency, of the present times is to place women on an equality with man in every particular. While such fact and tendency does not prevent legislation necessary to the protection of the health of women, it certainly does make equally important the jealous guarding of the rights of women in the matter of contracting so far as is at all possible.

In re Morgan, 26 Colo. 415, 77 A. S. R. 269, decided in September, 1899, involved a statute imposing a restriction upon workmen in underground mines. The opinion is a very elaborate and exhaustive analysis of the principles and adjudications on the subject, differing in its conclusion from the reasoning of this court in *Holden v. Hardy, supra.* This difference in the result is no doubt partly due to the peculiar provisions of the Colorado constitution. But a reading of the opinion affords a well needed corrective of the loose reasoning on constitutional principles found in a number of state decisions. We quote, however, only two portions, as follows:

> "Notwithstanding this general rule, we are here met with the argument, and the assertion is baldly made, that in the exercise of its police power, the legislature is subject to no restriction except its own unbridled discretion as to what subjects it may select for regulation, and the kind of regulation it may prescribe. We cannot assent to this doctrine. It may find apparent sanction in unguarded expressions of text-writers, or in

judicial opinions, but it is contrary to every well-considered decision. It is for the legislature to determine the exigency, that is, the occasion, for the exercise of the power; but it is clearly within the jurisdiction of the courts to determine what are the subjects upon which the power is to be exercised, and the reasonableness of that exercise: Tiedeman's Limitations of Police Power, sec. 3; People v. Jackson etc. Plank Road Co., 9 Mich. 285; Lake View v. Rose Hill Cemetery Co., 70 Ill. 191; 18 Am. & Eng. Ency. of Law, 746 *et seq.*; People v. Gillson, 109 N. Y. 389, 4 Am. St. Rep. 465.

* * * * * * * *

"In reply to the argument of counsel, who claimed the most sweeping power of the legislature in restricting the right of contract, when the general good requires it, the court said: 'It may be restrained only in so far as it is necessary for the common welfare and the equal protection and benefit of the people. That such restraint of the right and liberty of contract is for the common public welfare and equal protection and benefit of the people, must appear, not only to the general assembly, by force of popular clamor, or the pressure of the lobby, but also to the courts; and it must be so clear that a court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common welfare and equal protection and benefit of the people.' To the same effect see Spry Lumber Co. v. Sault Sav. Bank etc. Co., 77 Mich. 199, 18 Am. St. Rep. 396.

* * * * * * * *

"Whatever the basis for the decision may be, the reasoning of the court in support of it is not satisfactory, for in answer to the

argument that the prohibition of the act violated the right of an adult woman to labor as many hours per day as she chooses, the court said:

" 'The obvious and conclusive reply to this is, that the law does not limit her right to labor as many hours per day or per week as she may desire; it does not in terms forbid her laboring in any particular business or occupation, as many hours per day or per week, as she may desire; it merely prohibits her being employed continuously in the same service more than a certain number of hours per day or week, which is so clearly within the power of the legislature, that it becomes unnecessary to inquire whether it is a matter of grievance of which this defendant has the right of complaint.'

"We may apparently digress to remark that if this construction is correct, and if the real object of the act be to protect the health of a certain class of working women by shortening the hours of labor, that object is frustrated, since, if the act permits one of the designated class, after working the eight hours, to engage in any other than the forbidden kind of labor for as many additional hours as she choose in any one day, practically there is no limit at all upon the length of time that she may work, provided she can get employment.

"But the disposition made of the case evades the real question. To one who desires to devote her entire time and energies in laboring at one particular occupation in which the legislature seeks to restrict her, it is no answer to say that her right to make contracts for her labor is not curtailed because she may work as many additional hours as she pleases at some other occupa-

tion. The value of the right consists in freedom to labor in any lawful business she may select, for as many hours each day as she chooses.

"This case is the only authority cited in some of the text books for legislation of this character; but we cannot follow it. Its doctrine, as applicable to adult men at least, is materially weakened, if not overthrown, by the subsequent decision in Commonwealth v. Perry, 155 Mass. 117, 31 Am. St. Rep. 533, where an act providing that no employer shall impose a fine upon an employe engaged at weaving, or withhold his wages, in whole or in part, for imperfections that may arise during the process of weaving, was held to be in conflict with the constitution of that commonwealth, as interfering with the right of acquiring, possessing and protecting property; and in the latter case are cited with approval several authorities hereinafter to be discussed, which are squarely in conflict with the former."

Low v. Rees Printing Co., 41 Neb. 127, 43 A. S. R. 670, decided June, 1894, adjudged that a Nebraska statute declaring that a day's work for all classes of mechanics, servants, and laborers, excepting those engaged in farm or domestic labor shall not exceed 8 hours, etc., was unconstitutional. This opinion also contains an excellent statement of the principles generally applicable to the restriction of hours of labor. We quote, however, only one statement, to wit:

"Until a comparatively recent period it would have been quite difficult to find adjudi-

cations pertinent to the legal propositions involved. For some reason, not necessary to consider, there has in modern times arisen a sentiment favorable to paternalism in matters of legislation."

We may add that we hardly think this "sentiment" is such a "wide spread belief" as is mentioned by this court in *Muller v. Oregon, supra.*

But the land mark in the line of adjudication opposed to radical legislative interference in private business is afforded in the well known case of *Ritchie v. People,* 155 Ill. 98, 46 A. S. R. 315. We quote from it as follows:

"CONSTITUTIONAL LAW.—A WOMAN IS ENTITLED to the same rights under the constitution to make contracts with reference to her labor as are secured thereby to men. She is both a citizen and a person within the meaning of the fourteenth amendment of the constitution of the United States. With respect to an occupation not unsuitable to her sex the legislature cannot declare the number of hours per day or week in which she may be employed." (Syllabus.)

"The complaint charged that, on a certain day in February, 1894, plaintiff in error employed a certain adult female of the age of more than eighteen years to work in a factory for more than eight hours during said day."

"The present prosecution, as is conceded by counsel on both sides, is for an alleged violation of section 5 of said act. That section is as follows: 'No female shall be employed in any factory or workshop more than

eight hours in any one day or forty-eight hours in any one week.' "

"Women employed by manufacturers are forbidden by section 5 to make contracts to labor longer than eight hours in a day, while women employed as saleswomen in stores, or as domestic servants, or as bookkeepers, or stenographers, or typewriters, or in laundries, or other occupations not embraced under the head of manufacturing, are at liberty to contract for as many hours of labor in a day as they choose. The manner in which the section thus discriminates against one class of employers and employees and in favor of all others places it in opposition to the constitutional guaranties hereinbefore discussed, and so renders it invalid."

"The question here is not whether a particular employment is a proper one for the use of female labor, but the question is whether, in an employment which is conceded to be lawful in itself and suitable for women to engage in, she shall be deprived of the right to determine for herself how many hours she can and may work during each day. There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow. But the police power of the state can only be permitted to limit or abridge such a fundamental right as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare, or safety of society or the public; and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular call-

ing. The court of appeals of New York, in passing upon the validity of an act 'to improve the public health by prohibiting the manufacture of cigars and preparation of tobacco in any form in tenement houses,' etc., has said: 'To justify this law it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manipulation may be injurious to those who are engaged in its preparation and manufacture; but it would have to be injurious to the public health': *In re Jacobs*, 98 N. Y. 98; 50 Am. Rep. 636. Tiedeman, in his work on Limitations of Police Power, says: 'In so far as the employment of a certain class in a particular occupation may threaten or inflict damage upon the public or third persons, there can be no doubt as to the constitutionality of any statute which prohibits their prosecution of that trade. But it is questionable, except in the case of minors, whether the prohibition can rest upon the claim that the employment will prove hurtful to them. * * * There can be no more justification for the prohibition of the prosecution of certain callings by women, because the employment will prove hurtful to themselves, than it would be for the state to prohibit men from working in the manufacture of white lead because they are apt to contract lead poisoning, or to prohibit occupation in certain parts of iron smelting works, because the lives of the men so engaged are materially shortened': Sec. 86.

"We are also referred to statements made in some of the text-books to the effect that the legislature may limit the hours of labor of women in manufacturing establishments: Parker & Worthington's Public Health and Safety, sec. 260; 18 Am. & Eng. Ency. of

Law, 753. These statements appear to be based entirely upon the decision of the supreme court of Massachusetts in *Commonwealth v. Hamilton Mfg. Co.*, 120 Mass. 383. There it was held that an act, providing that no woman over the age of eighteen years should be employed by any person, firm or corporation in any manufacturing establishment more than ten hours in any one day, was valid. *But, under the constitution of Massachusetts* (art. 4, sec 1), *the legislature has power to ordain all manner of wholesome and reasonable statutes*, with or without penalties, not repugnant to the constitution, 'as they shall judge to be for the good and welfare of the commonwealth, and for the governing and ordering thereof, and of the subjects of the same.' The decision referred to was evidently made in view of the large discretion so vested in the legislative branch of the government; and it was said that the act might be maintained as a health or police regulation, because the legislature deemed the employment of manufacturing dangerous to health. But the Massachusetts case is not in line with the current of authority, *as it assumes that the police power is practically without limitation*. As has already been stated, the legislature cannot so use that power as to invade the fundamental rights of the citizen, and it is for the courts to decide whether a measure, which assumes to have been passed in the interest of the public health, really 'relates to and is convenient and appropriate to promote the public health': *In re Jacobs*, 98 N. Y. 98; 50 Am. Rep. 636; *People v. Gillson*, 109 N. Y. 389; 4 Am. St. Rep. 465. We said in *Lake View v. Rosehill Cem. Co.*, 70 Ill. 191, 22 Am. Rep. 71: 'As a general proposition it

may be stated it is the province of the law-making power to determine when the exigency exists calling into exercise this power. What are the subjects of its exercise is clearly a judicial question.' The reasoning of the opinion in the Massachusetts case cited does not seem to us to be sound. It assumes that there is no infringement upon the employer's right to contract, because he may employ as many persons or as much labor as he chooses, nor upon the employee's right to contract, because she may labor as many hours as she chooses in some other occupation than that specified in the statute. This is a begging of the question. The right to contract would be valueless, if it could not be exercised with reference to the particular subject matter in hand. If its exercise is forbidden between two persons competent to contract and concerning a lawful subject of contract it is none the less abridged because other persons may be permitted to contract, or because the same persons may be at liberty to contract about some other matter.

"We cannot more appropriately close the discussion of this branch of the case than by quoting and adopting as our own the following words of the New York court of appeals in *In re Jacobs*, 98 N. Y. 98, 50 Am. Rep. 636: 'When a health law is challenged in the courts as unconstitutional, on the ground that it arbitrarily interferes with personal liberty and private property without due process of law, the courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. This we have not been able to see in this law

(section), and we must, therefore, pronounce it unconstitutional and void. * * * ' "

This opinion has never been repudiated by the Supreme Court of Illinois. It seems to us by far the most valuable discussion of the question. Among other valuable points, it effectually disposes of the contention that the famous case of *Commonwealth v. Hamilton Mfg. Co.*, 120 Mass. 383, justifies, as so many subsequent adjudications have erroneously assumed, the subsequent course of legislation in many of the states. For it appears that the constitution of Massachusetts gives its legislature peculiar powers in the premises, not found in the constitutions of other states. The Ritchie case also exposes convincingly the fallacy of the argument in the Massachusetts opinion that because the statute does not prohibit a woman working in different employments so as to make up an aggregate of more than 10 hours a day, the statute therefore does not *limit* a woman in her hours of employment. Indeed, the reasoning of the Massachusetts judge deserves the severest condemnation for this begging of the question in that way. We cite the foregoing opinion as our leading authority.

Burcher v. People, 41 Colo. 495, 93 Pac. 14, 124 A. S. R. 143, decided in September, 1907, involved the constitutionality of the "Women and Children Labor Act" of 1903. The court decided

that the legislation was unconstitutional as being an arbitrary limitation upon employments appearing to be perfectly healthy, partly, however, basing its decisions upon its construction of a special clause of the Colorado constitution. The general reasoning of the opinion, however, seems to us applicable.

In concluding this division (I) of our argument, it seems to us that many of the state courts have gone astray for three principal reasons:—(1) it has not been kept in mind that the famous Massachusetts precedent, *Commonwealth v. Hamilton*, should always be construed in the light of the peculiarly ample delegation of power to the legislature of that state by its constitution, and the opinion's rather too general phraseology must always be limited thereby; (2) the state courts have allowed themselves, by a process of repetition and lack of fresh recollection always of the original principles, to be edged gradually and farther off the field by the insistence of legislatures; and (3) we feel, and must state our feeling frankly, that *Muller v. Oregon*, by its failure to more accurately define the proper principles, has misled many courts. What sort of "widespread and long continued belief" justifies legislation restrictive of individual rights might have been defined more accurately, or at least with its proper limitations. Mr. Justice Brewer no doubt had them

in mind: unluckily he assumed that others would. For we cannot believe that he had forgotten the long line of anti-Chinese California legislation which had had to be invalidated by this court, though it had previously been held valid by the California state courts. There was always a widespread and long-continued belief sustaining such Chinese restrictive legislation with the California public. Yet we know that alone could not justify a direct and unlimited invasion of the individual's right. Can we say, too, that the equally strong anti-Japanese "widespread belief" now controlling in California is, of itself, a sufficient justification? We know that other justifications must be found,—not the same preservative principles as in our case, but equally strong. We know, too,—as all but the unthinking know—that there is after all no liberty other than the *individual's* liberty. Much vague declamation cannot obscure this prosaic fact. And we've yet discovered no way to save the individual's liberty other than by our system of checks and balances. From the days of Athens and Cleon down to that of French Committees of Safety there has been no tyranny like that of the unchecked majority of "the people,"—and it's been the more thorough that it was always under the cloak of *salus populi.* So we come back to our first principle,—that the freedom of contract, that *sine qua non* of property rights, will be frittered away,

unless the courts enforce the constitutional rule that any restrictions of an adult citizen's right to contract must be *necessary* to his or her health, —reasonably *necessary*, not merely possibly beneficial. And the *ipse dixit* of a political majority is hardly such a "widespread belief" as will justify this. Have we any doubts that many of the limitations in our Act—e. g. as to hotels,—are *not* reasonably necessary? In a brief for the Act, filed below, we find this: "'Strong men,' said His Excellency, Governor Hiram W. Johnson, in a statement issued when he signed the law under consideration, 'by unity of action, have obtained for themselves an eight-hour day. *Shall we require greater hours of labor for our women?*'" That is, the government is to assume the role of a benevolent and gratuitous trades-union for women.

We are, of course, not condemning labor unions. We are merely distinguishing between their individualistic functions, which are economic and for their own financial betterment, and the functions of government, which are political. It is perhaps fair to assume that the similar business betterment of women-workers will be attended to promptly enough by the women-workers themselves, through the medium of similar labor-unions. If we may judge by the effective powers of women in this way, as so obviously exhibited by their organized agitation for suffrage,

we are hardly justified in placing them in the category of the helpless, or wards of the government. In this state of California, as it happens, they have thus secured the suffrage. We have heard much from our opponents to the effect that times have changed. We agree,—and the most signal illustration of the change is the organized and effective activity of women. But, significantly, they have yet made no public effort or agitation for legislative regulation such as that in the statute at bar. That a few women of leisure and club-activity may have originally been for this legislation is hardly enough to constitute a "widespread public demand;" such as is required by the "Muller" case. The women-workers themselves have not agitated for it. But to return to the statement of the promoter of this legislation, we ask—Where is the pretense left of public health? Where is any distinction left as to the character of the employment being any test of arduousness or otherwise? We waive the question of motive in the present state administration's legislation, as disclosed by such a quotation,—but no one can overlook the disastrous effect of the admission. It's an admission of fact, and a solemn admission,—that the test was never "What is strictly necessary for the health of women in the various employments?" but "Shall they not have equal privileges with the most favored of men employees?" Excepting to provide women with

seats, not one of the hundred justifiable provisions of humanitarian legislation for the health of women is mentioned in the Act. To be frank, it was a question of health at all only in so far as it might prove so incidentally,—it was actually a question of privilege, of stepping in to help out the laggard operation of economic forces. Shall we say frankly it was an attempt in the way of "benevolent despotism"?

II.

The Act is Vitiated by Manifold and Fatal Discriminations, and is Therefore Unconstitutional.

The statute whose validity is challenged in this proceeding contravenes the "equal protection of the laws" clause of the XIV amendment. This clause we assume, under the authority of many adjudications of this court, to be synonymous with the clauses in state constitutions prohibiting class-legislation and discrimination.

The first and most obvious discrimination in the act is the *express* exception of all women employed in harvesting fruit or vegetables. This exception is the only *express* exception,—it is intentional and deliberate and vitiates the entire act. It is "class" legislation in its most obnoxious sense.

The second example of discrimination is that between "hotels" and "boarding houses." The

two terms have always and universally been held not to be synonymous or mutually inclusive,—as terms of definition they do not overlap. The nature of the work of employees is, however, identical. As "hotels" are included in the act and "boarding houses," lodging houses, etc., are omitted, there is therefore an obvious and fatal discrimination invalidating the act. The discrimination is a substantial one, by reason of the immense number of women employed in the two classes. This particular discrimination is of course the one most directly involved in this case, as the petitioner is conducting a hotel as distinguished from a boarding house, etc.

A third discrimination is that involved in the total omission from the act of several considerable classes of women employees, whose employments are in no wise distinguishable in any particulars from many of those included,—e. g. stenographers, clerks and assistants employed by the professional classes and all domestic servants. This discrimination is properly raised as an element of the invalidity of the Act because the Act is not confined in its scope to a few special classes of women's employments,—the dangerous or particularly arduous ones,—it is intended to cover practically the entire field of women's employments. The omission of the above specified classes may be properly treated, therefore, as a purposely intended exception of such omitted classes.

The Act clearly intends to cover the entire field—or so much of the entire field, at least, as previous similar laws gave any excuse for covering—and must be tested by such purpose,—that is, it cannot be argued in this case that there is no discrimination by reason of the omission of classes over which the legislature might have legislated.

A final discrimination that runs throughout the act and vitiates it all is that the classification used, so far as it goes, is based solely on the nature of the employer's general business, and not on the nature of the employee's employment. The nature and conditions of a stenographer's or bookkeeper's or office clerk's work is essentially the same in all employments,—yet, by reason of the classification adopted in the act, a substantial portion of stenographers, bookkeepers and office clerks are omitted.

The First Discrimination is the most flagrant and most obnoxious, on the ground of public policy, and on every ground. It is express and deliberate. Though it refers to "perishable" fruits and vegetables, of course everyone knows that any fruit or vegetable is in its raw state perishable,—and the act in effect therefore includes all fruit or vegetable harvesting, etc. And whether the words "fruits and vegetables" can be construed to include all cereals, as a matter of legal definition, is perfectly immaterial, as farming of any kind is excluded from the operation of the

act by its omission, in any event. Thus we have the entire farming and fruit industries excluded from the operation of the act,—that is, agriculture and horticulture, the cultivation of the soil. In plain English, city life as a whole (with a few favored exceptions) comes under the burdensome restrictions of the act,—but country life as a whole is relieved therefrom and left in freedom. If this is not *"class"* legislation, then we don't know what the term means. And can this court refuse to see, what every other member of the public must know,—the real motive, the real purpose, of this wholesale discrimination? We think not. In the country they don't care for paternalism, socialism, what you will,—the governmental shortening of hours of labor for interested motives. In the country there is no standart for labor set by labor-unions. There can be no pretense that the discrimination here—this wholesale exception and immunity—was on the ground of health. It was intended for the *material* and *economic* benefit of certain classes. Why were domestic servants, and the employees of the professional classes, also omitted from the act? There is in those three great classes a common principle of exclusion,—a logical classification,—with a vengeance. And it is *not* on the ground of health. It is the only logical classification in the act,—but it is a perfectly illegitimate one. It parallels the employments of the men

which are covered by trades-unions. And it stamps the entire act with its obvious impress—its *real* purpose, not the pretended one. Why was an *eight*-hour chosen, not the *ten*-hour limitation that had been found "necessary" in other states (and there only in the few special and most arduous employments)? This indeed is *class* legislation! We need not argue the purpose and the motive of the discrimination *dehors* the act itself,—we need only argue from its effect. That effect is obvious and necessarily follows the provisions of the act. It is discrimination of the most pernicious kind, and in matters not within the scope of the police power of these United States. In enacting law, as in everything else, men must be presumed to intend the natural and necessary results of their conduct. The vice of it affects the whole act and makes it altogether unconstitutional.

In point right here we find the remarks of Mr. Justice Brewer in *Cotting v. Godard*, 183 U. S. 79 (at p. 107 of L. Ed., Vol. 46). That was a case involving the constitutionality of a Kansas law classifying packing houses, for purposes of tolls, according to their volume of business—the act affecting most burdensomely the large packing houses in the cities. The court said:

> "We cannot shut our eyes to well-known facts. Kansas is an agricultural state. Its extensive and fertile prairies produce each

year enormous crops of corn and other grains. * * *

"Now, shall they whose interests are all along the line of production, having by virtue of their numerical majority the control of legislation, be permitted to say to one who acts as an intermediary between transportation and sale, that while we permit no interference with the prices which we put upon our products, nevertheless we cut down your charges for intermediate services," etc.

The act there involved was held to be too obviously class-legislation.

The obvious purpose of the discrimination in our act we have referred to. And it isn't relieved of that vice by the acquiescence therein on humanitarian grounds of that large portion of the community unaffected by its burdens. For a full discussion of the general principles of discrimination herein involved we particularly refer to Mr. Justice Brewer's opinion.

For brevity, we refer to, without citing, the full discussion of the subject of police power and discrimination, in *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 46 Law Ed. 679.

The freedom to contract is protected from unreasonable restriction, similarly with every other proper freedom, by the XIV amendment.

Cf. *Allgeyer v. Louisiana*, 165 U. S. 578-589;

State v. Peel Splint Coal Co., 36 W. Va. 856;

State v. Goodwill, 33 W. Va. 179.

The provision for equal protection of the laws in the XIV amendment should be construed with the other protections of the said amendment. Its scope is the same as the provisions of the various clauses in state constitutions forbidding "class legislation" and unreasonable "discriminations."

Cf. *Barbier v. Connolly*, 113 U. S. 27.

Legislative classification must always be based on natural and reasonable distinctions. "It is apparent," says Justice Brewer, "that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and that in all cases it must appear not only that a classification has been made, but also that it is based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

Gulf etc. Ry. v. Ellis, 165 U. S. 150.

The discretion allowed a legislature in classification in the case of taxation is, of course, in the nature of the case, much wider than in cases of regulation, particularly in the case of regulation of lawful occupations of an usual nature.

Cf. *Bell's Gap R. R. Co. v. Penn.*, 134 U. S. 237.

In *Low v. Rees Printing Co.*, (Neb.), 59 N. W. Rep. 362, the court holds the statute there in-

volved unconstitutionally discriminating—the act being one concerning hours of employment and excepting "those engaged in farm or domestic labor." We refer the court also to the very full discussion of authorities in that opinion.

We repeat then that this particular discrimination—making all agriculture and horticulture immune—is one of the most obnoxious of the many aspects of discrimination in the act, and utterly vitiates it throughout.

In *Dougherty v. Austin*, 94 Cal. 620, it is said:

> "If there is any one feature of the constitution more marked or any characteristic more pervasive than all others, it is this oft-reiterated, this general and specific inhibition of local and special laws."

Commenting on such constitutional inhibitions, the court in *Darcy v. Mayor etc. of San Jose*, 104 Cal. 642, 645, says:

> "Legislatures and courts are not at liberty to disregard a policy so plainly manifested in the fundamental law."

The court then, in that case, declares that classification for the purpose of legislation must be founded upon differences which are either defined by the constitution or natural. The classification must not be arbitrary. The marks of distinction on which the classification is found must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify

the restriction of the legislature. The court then quotes from *Lodi v. State,* 51 N. J. L. 402, as follows:

> "The rule is that in any classification for the purpose of a general law all must be included and made subject to it, and none omitted that stand upon the same footing regarding the subject of legislation. To omit one so circumstanced is as fatal a defect as to include but one of a number."

And in a later case this doctrine is reiterated as follows:

> "It has been uniformly held that a law is general which applies to all of a class—the classification being a proper one—and that the requirement of uniformity is satisfied, if it applies to all of the class alike. The word 'uniform' in the constitution does not mean 'universal.' The section intends simply that the effect of general laws shall be the same to and upon all persons who stand in the same relation to the law—that is, all the facts of whose cases are substantially the same. The classification, however, is not a proper one for distinct legislation, if it is not founded upon some natural, intrinsic or constitutional distinction, a distinction which bears some relation to or furnishes cause for the particular legislation embraced in the act."
>
> *Hellman v. Shoulters,* 114 Cal. 147.

In the case of *Budd v. Hancock,* 66 N. J. L. 135, 48 Atl. 1023, cited with approval in *Ex parte Sohncke,* 148 Cal. 262, 267, this same rule is stated very clearly as follows:

"A law is special in a constitutional sense when, by force of an inherent limitation, it arbitrarily separates some persons, places or things from others, upon which, but for such limitation, it would operate. An invariable test of a special law is the appropriateness of its provisions to the objects *that it excludes.* It is not, therefore, what a law includes, that makes it special, *but what it excludes.* If nothing be excluded that should be contained, the law is general. Within this distinction between a special and a general law, the question in every case is whether any appropriate object is excluded to which the law, but for its limitations, would apply. If the only limitation contained in the law is a legitimate classification of its objects, it is a general law. Hence, if the object of a law have characteristics so distinct as reasonably to form, for the purpose litigated upon, a clause by itself, the law is general, notwithstanding it operates upon a single object only, for *a law is not general because it operates upon every person in the state,* but because every person that can be brought within its predicament becomes subject to its operation."

In the following cases, statutes were held unconstitutional as violating the constitutional inhibitions against special laws, the classification being held arbitrary and without reasonable basis.

Slocum v. Bear Valley Irrig. Co., 122 Cal. 555;

Johnson v. Goodyear Mining Co., 127 Cal. 417;

Krause v. Durbrow, 127 Cal. 681, 685;

Beveridge v. Lewis, 137 Cal. 619, 623;
Ex Parte Sohncke, 148 Cal. 262;
Ex Parte Westerfield, 55 Cal. 552, 553.

All authorities hold that legislation is special which applies to a selected or designated class, even though it embraces the whole of the class, unless there appears some reason why its operation should, or may, be restricted to the selected class; and legislation which seeks arbitrarily to impose a disability upon a particular class, which might for the same reason be applicable to the whole community, or to other classes or portions thereof, should be declared void.

As was said by Mr. Justice McKinstry in his concurring opinion in *Ex Parte Westerfield*, 55 Cal. 550, 553, "To say that every law is general within the meaning of the constitution, which bears equally upon all to whom it is applicable," (i. e., is applicable by the terms of the statute only) "is to say that there can be no special laws." We submit this statute does not apply equally to all persons similarly situated and is therefore class legislation.

The Second Discrimination we have mentioned is that involved in including within the restrictions of the act all hotels and in excluding (by omission) all boarding houses, lodging houses, rooming houses, etc. The nature of the employ-

ment of women in both the excluded and included classes being identical, the discrimination is obvious. And petitioner is engaged in conducting *an hotel,* and the point is therefore directly involved.

It is a matter of general knowledge and therefore a matter of which the court takes judicial notice that the work done in conducting rooming houses, lodging houses and boarding houses is similar in every respect to the work done in hotels. Chambermaids are employed in all to do the chamber work, while in boarding houses waitresses are employel in the same manner as in hotels. Indeed, the work done in large boarding houses and hotels are so alike that no person can suggest a distinction. It is well known that boarding houses are more numerous than hotels and their employees are an equally considerable class.

According to the United States census in 1900 there were then in this state 3565 boarding and lodging house keepers and 2390 hotel keepers.

This eight hour law does not apply to the employees of boarding or rooming houses, but only to the employees of hotels. We understand that not only is this conceded by respondent but that the legal distinction between an hotel and a boarding house is conceded—respondent's contention being that the nature of the employment of women in the two classes of occupations is sub-

stantially dissimilar and the discrimination in the statute is therefore justifiable. We, however, state the law and the facts as we understand them.

In the case of *Pinkerton v. Woodward*, 33 Cal. 557, the Supreme Court defined an inn to be "a public place of entertainment for all travelers who choose to visit it," and stated that it is distinguished from a private lodging or boarding house in this: that the keeper of the latter is at liberty to choose his guests, while the innkeeper is obliged to entertain and furnish all travelers of good conduct and means of payment everything which they have occasion for, as such travelers, on their way.

In *Martin v. State Insurance Co.*, (15 Vroom. 485), 43 Am. Rep. 397, it is said:

> "The terms 'hotel,' 'tavern' and 'inn' are properly applied to places kept for the entertainment of travelers and casual guests—as distinguished from a boarding house, which is kept principally for the residence of permanent boarders."

The distinction between an inn and a boarding house is given clearly in *Fay v. Pacific Improvement Co.*, 93 Cal. 253, 259. In this case "inn" and "hotel" are treated as synonymous, and the difference between "inn" and "boarding house" stated in Schouler on Bailments, 253, is cited with approval as follows:

> "An inn is a house where a keeper holds himself out as ready to receive all who may choose to resort thither and pay an adequate price for the entertainment; while the keeper of a boarding house reserves the choice of comers and the terms of accommodation, contracting specially with each customer, and most commonly arranging for long periods and a definite abode."

The Fay case is a very important authority, in construing a California statute, as the whole case turned on the single distinction between an hotel and a boarding house, and the question is therefore fully gone into. This authority has never since been questioned, either in this state or elsewhere.

Though the statutes of many of the states have made some of the common-law incidents formerly applicable only to inns or hotels also now applicable to boarding houses (liens, etc.), yet the main and vital distinction has never been abolished—to-wit, that a hotel keeper is legally liable to entertain any proper guest while a boarding house keeper is not. Also, the further distinction that a hotel keeper can be held to a scale of prices and a boarding house keeper can not. The terms have never been made synonymous. Even those statutes which are made applicable to both and to lodging houses, etc., enumerate them severally.

The following are still authoritative cases:

Cromwell v. Stephens, (N. Y.), 2 Daly, 15, 17, 23, 3 App. Prac. (N. S.) 26;

Kelly v. Excise Com'rs. of N. Y., 54 How. Prac. 327;

Martin v. State Ins. Co., 44 N. J. Law (15 Vroom.) 495, 43 A. S. R. 397.

Cf. also:

22 Cyc. 1070;

16 Am. and Eng. Ency. of Law, 510;

Beale on Innkeepers and Hotels, pp. 24-25, etc.

And we understand it to be conceded by respondent that the word "hotel" in our act does not include "boarding houses" or "rooming houses."

It is apparent, therefore, that when the legislature used the word "hotel" in this act, it did not include lodging houses or boarding houses, and the only dispute can be whether boarding houses and lodging houses or rooming houses "stand upon the same footing" regarding the subject of this legislation. If "the test of a special law is the appropriateness of its provisions to the objects that it excludes"; if it is not "what a law includes" that makes it special, but what it excludes, surely the statute by excluding rooming houses and boarding houses from its operation becomes a special law, and comes within the

inhibition of the constitution cited. It was said in *Ex Parte Jentzsch*, 112 Cal. 468, 474, that

> "A law is not always general because it operates upon all within a class. There must be back of that a substantial reason why it is made to operate only upon a class, and not generally upon all. As was said in Pasadena v. Stimson, 91 Cal. 238: 'The conclusion is that, although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.'"

Can there be "a substantial reason why this statute is made to operate only upon a class," i. e., hotels, and not upon rooming houses and boarding houses, which "stand in precisely the same relation to the subject of the law?" Conceding this statute to be a health law, then its object or purpose is to protect and conserve the health of women. If this is its purpose, then the law to be general should apply to all places employing women in a similar capacity; to be general the statute should apply to the chambermaids and waitresses in boarding houses and rooming houses. As was said by the Supreme Court of the United States in *Lochner v. New York, post*,

"The liberty of contract relating to labor includes both parties to it." This statute imposes peculiar disabilities and burdensome conditions upon hotel keepers in the exercise of a common right—which it does not impose upon boarding house keepers or lodging house keepers, who stand in precisely the same relation to the subject of the law. A woman may contract with a keeper of a boarding house upon any terms she pleases to render service as a waitress, but cannot so contract with an hotel keeper to do exactly the same kind of work. This statute permits a boarding house or lodging house keeper to work his chambermaids sixteen hours per day, and makes it a crime for an hotel keeper to work his chambermaids more than six hours and fifty-two minutes upon an average for each day during a seven days week. The court will take judicial notice that an hotel, unlike most other businesses, must be open for business seven days each week.

We found in the opinion of the state court, however, an understanding of the situation as to hotels compared with boarding houses so discrepant with what we had believed was a matter of common knowledge that it seems fair to the petitioner herein to explain his position more fully than would otherwise have been justified.

Referring particularly to the discrimination in the statute between hotels and boarding houses, the opinion of the state court says:

"The census returns show that in this state the number of boarding houses and lodging houses, combined, exceeds the number of hotels by about fifty per cent of the number of the latter."

This fact is true and important. In cities of any considerable size, it is a well known fact that the number of boarding houses, lodging houses, etc., is ten or twenty times the number of hotels. The large number of hotels in comparison with boarding houses, etc., in the state as a whole is therefore accounted for by the situation in the smaller towns and villages, so different from that in the large cities. In the smaller towns and villages there are a great many instances where there are no boarding houses, or practically none, and where the hotels, strictly speaking, cover the needs of the town or village. This is proved not only by the facts aforesaid but it is a matter of common knowledge with every one who has traveled at all outside of the larger cities. Moreover, in the smaller towns and villages the employment of women as waiters is of course much commoner than in hotels in the larger cities. Now what is the significance of this fact? It is that in the hotels in the smaller towns and villages—and these hotels constitute an immense number, if not a majority, of the total list of *hotels* in the state—there are always, as every one knows, a larger number of more or less per-

manent guests who are residents of the town. They are not transients. Such guests are not only permanent as to a constant use of the dining room but also are, perhaps in a slightly less degree, permanent as to the use of lodgings in these small hotels. We now quote again from the opinion:

> "But there are other obvious differences. The patrons of lodging houses and boarding houses use them as places of residence. They are for the most part permanent occupants. Such places partake more of the nature of a home or residence than does a hotel. They are not accessible, as of right, to the public generally, as is the case with hotels. The occupants may be, and often are, selected by the proprietor, and frequently they compose a class having similar habits, tastes and desires. An acquaintance arises between them and the servants soon become accustomed to the wants and ways of those by whom their services are required. The occupants of a hotel are of a more transient character."

Now this is the sole distinction that the court is able to point out between the class of hotels and the class of boarding houses. If it were allowable in justice to the facts to make a valid comparison or distinction between the two classes by taking a typical instance of one class and comparing it with a typical instance of another class, there might be some merit to this distinction, but such a method of comparison in this instance seems to us absolutely misleading. A hotel in a

country town is no more like a large hotel in a large city than is a general village store like a highly specialized store of the best class in a large city. It must always be kept in mind that probably far the greater number of hotels in the state list of hotels are small, and in most instances, very small hotels—what used, of course, to be called inns or taverns. They constitute the greater number and are therefore entitled to thorough consideration in any comparison of hotels with boarding houses in the state as a whole. And the attempt at distinction as above quoted from the opinion does not in the least apply to such smaller hotels. It must be remembered, too, that as to all of these smaller hotels, inns, or taverns in smaller towns or villages, the length of hours per day, and particularly the length of hours per week, prescribed by the statute, is particularly onerous. This is so for the reason, among others, that in such smaller towns and villages, often where there is only one place of public entertainment in the village, the trains or stages come and go at all hours, and entirely without reference to the convenience of the hotel people. It is not of course expected that the dining room should be kept open 24 hours but it is expected that where the breakfast room is open at seven o'clock in the morning, a traveler coming in more than eight hours later should be able to get dinner before retiring for the night. In

the cases assumed the number of travelers per day is not large, of course—we all have had the experience of being about the only traveler now and then—but there are 365 days in the year, and the total inconvenience to the public is out of all proportion to any benefit derived from the statute.

On this point of comparison between hotels and boarding houses it should be kept in mind, we assume, that California is in a sense the playground of the country. The state, and certainly at least nearly one-half of the state especially, is filled with hotels where guests from other states—from the cold states during the winter, and from the hot states nearer by during the summer—come in very large numbers and for periods of time ranging from one to four months. They are not at all transients in the ordinary sense as applied to a city hotel. They become acquainted with the other guests in the hotel and with the servants and are in all respects exactly in the condition of boarders in a boarding house. This fact is particularly pertinent in view of the fact that the petitioner herein is a proprietor of such a tourist hotel—a hotel also fulfilling many of the functions of a more or less permanent residence for some persons in the city of Riverside.

Something was said in the briefs in the court below to the effect that in hotels, by reason of the transient character of the guests, there was more liability to the spreading of disease. If there were

anything in this, it could easily be answered that a large part of "rooming houses" are for transients, and a great many boarding houses entertain transients. It is a fact also that the linen in the case of transients is changed more frequently than with the regular boarding house. But the proper remedy for any greater tendency to disease should be in laws directed to that particular end. That is the sufficient answer to such a distinction.

And these are the only distinctions, at all relative to the purposes of this statute, that anyone can point out between the various classes of hotels and the various classes of boarding houses. We believe that this court will not hold that any such distinction is valid. It is not inappropriate to state that, since the law was passed, it has puzzled many lawyers in given instances to decide definitely whether a given institution was technically a hotel or technically a boarding house; and it was only by the application of the technical distinction pointed out by the common law that the point could be decided—a distinction that has nothing whatever to do with the nature of the employment of waitresses and chambermaids.

The Supreme Court of Illinois in the case of *Bailey v. People*, 190 Ill. 28, 83 Am. St. Rep. 116,

in a case involving this precise distinction between an hotel and a boarding house, etc., said:

> "The principle which may be deduced from the declarations of this court on the subject is, that an act which arbitrarily discriminates against one class in the transaction of a business of a lawful occupation, and leaves unaffected by such discriminatory enactment other persons or classes of persons engaged in acquiring property in a manner not distinguishable in character from that in which the class discriminated against is employed is in contravention of the constitutional guaranties under consideration."

The court in the last mentioned case was called upon to pass upon the validity of a provision contained in a statute of that state reading as follows:

> "It shall be unlawful for more than six persons to occupy the same room for sleeping purposes at the same time in any such lodging house, and no room in such lodging house shall be occupied for sleeping purposes which does not contain four hundred cubic feet or more space for each person sleeping therein at the same time."

The court said:

> "The guaranty of section 2 of article 2 of the constitution of 1870 is that no person shall be deprived of liberty or property without due process of law. The term 'property' includes every interest anyone may have in any and everything that is subject of ownership by man, together with the right to freely possess, use, enjoy, and dispose of the same.

* * * The right to entertain lodgers in a lodging house and to fix, by contract with them, the price to be paid for such accommodation and the number who shall occupy the same room at the same time for sleeping purposes, is a liberty and also a property right. Any restriction upon or abridgement of this right deprives the citizen of both liberty and property.

"The attorney-general insists section 16 of the enactment in question, though it infringes the property right of the plaintiff in error, may be upheld as a proper exercise of the police power. In Booth v. People, 186 Ill. 43, 48, 78 Am. St. Rep. 229, 231, 57 N. E. 798, 799, we said: 'The state inherently possesses, and the general assembly may lawfully exercise, such power of restraint upon private rights as may be found to be necessary and appropriate to promote the health, comfort, safety and welfare of society. This power is known as the police power of the state. In the exercise of this power the general assembly may, by valid enactments—i. e., "due process of law"—prohibit all things hurtful to the comfort, safety, and welfare of society, even though the prohibition invade the right of liberty or property of an individual.'

" 'Due process of law' means a general public law, legally enacted, binding upon all members of the community under all circumstances, and not partial or private laws affecting only the rights of private individuals or classes of individuals. An enactment which deprives one class of persons of the right to acquire and enjoy property, or to contract with relation thereto, in the same manner as others under like conditions and circumstances are permitted to acquire and

enjoy property or contract with relation to it, is not comprehended within the true meaning of the words 'due process of law,' and is prohibited by the provisions of section 22 of article 4 of the constitution of 1870. The penalties of the section under consideration are leveled against one class—the keepers of lodging houses. The keeper of a lodging house is not, in a legal sense, an inn keeper, a hotel keeper or a boarding house keeper. Pullman Palace Car Co. v. Smith, 72 Ill. 360, 23 Am. Rep. 258; 16 Am. & Eng. Ency. of Law (2nd Ed.), p. 510. * * * Lodging house keepers constitute a class distinguishable from the keepers of other houses of public entertainment, such as hotels, inns, taverns, or boarding houses. This legislation is directed only against lodging houses. Keepers of boarding houses, inns, hotels and taverns do not fall within the purview of its prohibition. If the enactment is a valid one, inn or hotel keepers and the keepers of boarding houses may lodge seven or any greater number of guests or patrons in the same room, at the same time, for sleeping purposes, as may suit their convenience, subject, only, to the consent of their patrons or guests, without incurring the penalties which, under the provisions of this enactment, would be visited upon a lodging house keeper, should he allow more than six persons to occupy the same sleeping apartment at the same time. This is to discriminate against lodging house keepers as a class, and to deprive them of liberty and a property right which other persons engaged in business of the same general character and similarly conducted may freely exercise without let or hindrance. * * *

"The attorney-general concedes that the term 'lodging house' and the words 'inn,' 'hotel,' or 'boarding house' are none of them convertible terms or words, and that a distinction exists between these several institutions and a lodging house, but he insists that the act, though it has no penalties against the inn or hotel keeper or boarding house keeper, may be legally enforced against keepers of lodging houses as a sanitary measure, under the police power. * * *

"The lodging of more than six persons in any one room in a cleanly lodging house cannot be condemned, from a sanitary point of view, any more than the lodging of a like number of guests in one room in a hotel or boarding house. *If intended as a measure to protect health, the act should have been directed against the evil which threatens to introduce sickness or disease, whether found in a lodging house, boarding house, or hotel, and as its penalties are not so leveled it can but be regarded as partial and discriminatory legislation.* In Frorer v. People, 141 Ill. 186, 31 N. E. 399, we said: 'The police power is limited to enactments having reference to the comfort, the safety, or the welfare of society, and under guise of it a person cannot be deprived of a constitutional right. It is impossible that, under that power, what is lawful if done by A, if done by B can be a dismeanor, the circumstances and conditions being the same.'"

This case of Bailey v. People was cited with approval by the Supreme Court of California in *Ex Parte Sohncke*, 148 Cal. 262, 267. In the latter case, on page 267, the court said, in dis-

cussing a proper classification for the purpose of legislation:

> "The classification, however, is not a proper one for distinct legislation, if it is not founded upon some material, intrinsic or constitutional distinction, a distinction which bears some relation to or furnishes cause for, the particular legislation embraced in the act."

Further, upon the same page, quoting from *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 563, the court said:

> "In prescribing regulations for the conduct of trade (the state) cannot divide those engaged in trade into classes and make criminals of one class if they do certain forbidden things, while allowing another and favored class, engaged in the same domestic trade, to do the same things with impunity, and that it cannot discriminate 'by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exercise of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates."

In its decision in *Ex Parte Sohncke, supra*, the court held that no law could be passed limiting the charges of lenders of money upon chattels in amounts less than $300 and not limiting the charges of those loaning in larger amounts.

It was said by our Supreme Court in a recent case:

> "The power to forbid their (children's) employment in certain occupations and not in all, depends on the questions whether or not any appreciable number of children are employed in the callings not forbidden, and whether or not those callings are injurious to them, or less injurious than those forbidden."
>
> *In re Spencer*, 149 Cal. 396, 401.

Applying this rule to the case at bar—the employees of boarding or rooming houses are as numerous as in hotels, so that their numbers are not inappreciable, and their calling cannot be either more or less injurious than the same calling in hotels.

The Supreme Court in *"Matter of Application of Martin,"* 157 Cal. 51, 53, citing from *City of Pasadena v. Stimson*, says:

> "That although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law."

If the employees of hotels are of exactly the same character as those of boarding houses, then

the hotels are arbitrarily classified in this statute, and the employees therein and proprietors thereof are denied the equal protection of the law.

The Third Discrimination we mentioned, to-wit, that involved in the total omission from the act of many and considerable classes of women employees, whose employments are in no wise distinguishable in any particulars from many of those included—e. g., all stenographers, clerks and assistants employed by the professional classes—we need not discuss on principle. The discrimination is obvious as to the facts. And the law applicable has already been cited under the two previous heads. That this precise discrimination has not been more prominently mentioned in adjudicated cases is due undoubtedly, for one reason, to the fact that other laws in the earlier leading cases on this subject refer only to factories, mechanical and mercantile establishments, etc.—and that therefore the stenographers, etc., included have constituted nothing like the considerable classes discriminated against in our act. In this connection we refer to, without arguing, the question of the status of women employees in the vast numbers of offices maintained by agents of eastern and foreign concerns where no goods are kept for sale. Also, whether a newspaper establishment—not a printing office—is either a mercantile or a mechanical establishment.

For authorities, we refer particularly to those *supra* holding that the chief test of discrimination is—what similar classes are *excluded*? The same argument applies to domestic servants, etc., as compared with hotel waitresses and chambermaids.

The Fourth Discrimination that runs throughout the act and vitiates it all is that the principle of classification used is based solely on the nature of the *employer's* general business, and not on the nature of the work of the *employee.* As the only possible justification for these laws at all is *her* health, it seems obvious that the classification used should be based on the nature of *her* employment in all cases. For example, whether she does mechanical or mercantile *work*—the work of a stenographer, bookkeeper or office clerk being practically the same in all branches of business. The act has omitted in its scope the immense numbers of women employed as stenographers, bookkeepers and office clerks employed in all professional branches of business. Here, then, tested by the principle of *health,* the sole justification for any restriction of hours, we have a patent discrimination. The point is different from and additional to the one just previously mentioned. There it was a discrimination in favor of those omitted. Here (apart from the discrimination involved, assuming that the legislature was per-

fectly right in holding that the health of stenographers as a class did not require compulsory restriction to eight hours) we have all women stenographers, bookkeepers and office clerks in any of the enumerated employments—an immense class in itself—given precisely the same restriction as operatives in factories and mechanical establishments, or women sales clerks in mercantile establishments. This was of course done to simplify and abbreviate the law. But is that justifiable? We hardly think so. Are the rights of inhabitants of this country at the mercy of the convenience of legislators in that way? Vast numbers of employers and vast numbers of employees will suffer thereby. For we think it hardly necessary to point out that, in readjusting themselves to the new law, many businesses could not afford to employ women in office work from half past eight to half past four o'clock only. Whether we put this on the ground of discrimination or as an unjustifiably burdensome restriction, the result is the same—it is unconstitutional.

The English acts all refer to the nature of the work of the employee herself, not of the general employment. And similarly with restrictions on the employment of children. In the Virginia statute (1890) the wording is:

> "No female and no child under fourteen years of age shall work as an *operative* in any factory or in any factory or manufactur-

> ing establishment in this state more than ten hours in any one day of twenty-four hours."

In the Georgia act, referring to hours of labor of all employees, those whose duties are not of a mechanical or operative character are specifically excepted. (Ga. Stats. 1889, p. 163.)

Similarly, in laws restricting the hours of employment of railway engineers, etc., the particular classes of operatives are enumerated (office assistants being always omitted). Cf. Michigan Stats. 1893, p. 177.

In *Holden v. Hardy*, 169 U. S. 366, 18 Sup. Ct. 383, the Utah law limiting the hours of employment of miners was sustained, but on the ground that the statute by its terms limited its effect to those employees laboring in certain unusually arduous and unhealthful work. Says Mr. Justice Brown:

> "The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction, or refining of ores or metals."

(The constitution of Utah also had specifically authorized such health laws.)

The point seems clear that any classification must be on the ground of the nature of the particular work performed by the employee. A classification by the business of the employer does

not observe the principle on which such legislation at all can be justified.

It will be noticed that we have not sought to analyze or comment upon several very recent cases sustaining these discriminations. They seem to us very faulty in their reasoning and unsupported by the precedents. The respondent will call them to this court's attention. These cases confuse the classification allowable in revenue legislation with that allowable in purely regulatory statutes. This distinction has been so often insisted upon by this court recently that we need hardly emphasize it. The question of the specific discriminations in our act has not yet been passed upon by this court, and we feel that it can do so better on principle and with an open mind. The entire basis of the classification in the act is illegitimate. The various kinds of employments classed together have, as a whole, nothing in common as to the nature of the work itself. At most they refer only to the employer's business, which, of course, frequently involves substantial classes of women having work entirely dissimilar to each other. They do have one principle in common with each other and as distinguishing them from the excepted and omitted classes—they are the identical classes in which union labor has agitated for an 8-hour law for men. This alone is enough to vitiate the act, even were several of the other objections not equally fatal.

In the opinion rendered in this case by the California court it is to be noted that our point as to the said discrimination between, say, stenographers, clerks, etc., in the restricted employments, and the same class of employees in the "open" employments was entirely overlooked. This was overlooking one of the substantial points in the case. And as to the express exception by the statute of women employed in picking, curing, etc., perishable fruits and vegetables, we feel that the state court has applied an unjustifiable principle of distinction. The sole justification for the exercise of the legislature's interference can at the most be the health of women. But we find here an exception and distinction based solely on profit—based solely upon the making more money in a given employment. There are many other occupations, that is, mercantile and manufacturing establishments, that might be similarly justified for working overtime at one season of the year. But waiving that, it is still only too obvious that the exception is an attempt to favor one class on a ground entirely inconsistent with the assumed excuse for the balance of the act. Either the act or this exception is unjustified. In point right here we find most apropos the significant comment of the Illinois judge in concurring with his court on a very similar statute:

> "The exception, in so far as it refers to them (women), is based, not upon the health,

> safety, or welfare of the women employees, but upon the necessities of the employer; that is to say, if he is engaged in putting up perishable stuff, and might lose money by putting on more employees, or working them the prescribed number of hours, he can violate the law at will."

For the said several points of inequality and false classification and discrimination, therefore, the act seems invalid.

Conclusion.

In conclusion, we need say little. The inspection of the cases on the few statutes at all similar to our own will disclose a want of consideration of many aspects and effects of the acts that convinces one that the subject needs a thorough and fresh examination going back to the original principles involved. We have specifically mentioned the misconstruction of the early precedent of *Commonwealth v. Hamilton, supra,* and the misconception of the too general phraseology in *Muller v. Oregon, supra.* The courts have been caught, evidently, in the clamor for reform, good, bad and indifferent, and have been swept off their feet. Fortunately we are still only at the parting of the ways. We hope that our motto may still prove to be—liberty *and* reform, etc. All intelligent and humane citizens believe in progress and reform and humanitarian legislation. But paternalism and the loss of individual liberty are

not necessary to even specific humanitarian legislation. Such laws as this will hurt such legislation. Such legislation, wisely framed and with a due regard to each of the separate kinds of work and the proper safeguards as to air, sunlight, frequent rests, and the many small but important hygenic safeguards, does not fetter the woman employee or her employer. Such legislation has many precedents in England that would prove useful as guides, and such guarded and wisely considered legislation should not be difficult of enactment. Such legislation, including a *reasonable* restriction as to admittedly arduous employments, we favor. But bald attempts at economic betterment under the guise of the police power—that is, attempts to use the government, in the case of women, as a substitute for the organized associations of labor in the case of men, is demoralizing in the extreme. And such restraints as the constitution imposes, though they prove irritating to impatient reformers of private matters, are for this evident reason proved doubly necessary. There is unquestionably a well-defined movement throughout the country for greater freedom for women, as well as the well-defined growing humanitarianism. The latter has been the occasion of beneficial legislation as well as the excuse for much unwise legislation, and for laws passed under its name but actually for other objects. There is a point at which these two tend-

encies come into conflict. They therefore should, we submit, be equally kept in mind, one to correct the other. Proper humanitarian legislation is in no wise inconsistent with increasing liberty and equality of opportunity for women; but this crass classification and mingling of favoritism and restriction is but the illegitimate off-shoot of the spirit of the times.

We need not perhaps call this court's attention again to the fact that we here specifically represent an hotel keeper, an employer in an occupation neither unhealthy nor dangerous, nor, before this time, considered an arduous employment. And it would seem that we are entitled to take his point of view throughout in our argument. And it would seem, too, that the point, which almost amounts to a point of view, should be as important as it was to this court in the famous Chinese laundry cases that went up to this court from California, where it was so often said, as to each argument, that it must be always borne in mind that the legislature was dealing, not with a nuisance, but with a lawful and laudable business. Curiously enough, by a strange irony, the California court in this instant case, quoted as its authority, *In re Yick Wo*, 68 Cal. 297. That case was of course reversed by this court (cf. *Yick Wo etc.*, 118 U. S. 356), and on no point more specifically than the one quoted. In reading the opinion of the state court we saw that it didn't

answer our argument—which we had quoted from Mr. Justice Matthews—and the reason was only too apparent. It may be noted that neither *Muller v. Oregon*, nor any other decision of this court, has repudiated the often-quoted Illinois *Ritchie* case, *supra*, on which we so much rely, though the latter was decided in 1895.

For the spirit and effect of the act, then, as we have tried to make it evident, as well as for its letter, we think it should be held unreasonable and unjustifiable as a purported exercise of the police power.

Respectfully submitted,

FLINT, GRAY AND BARKER,

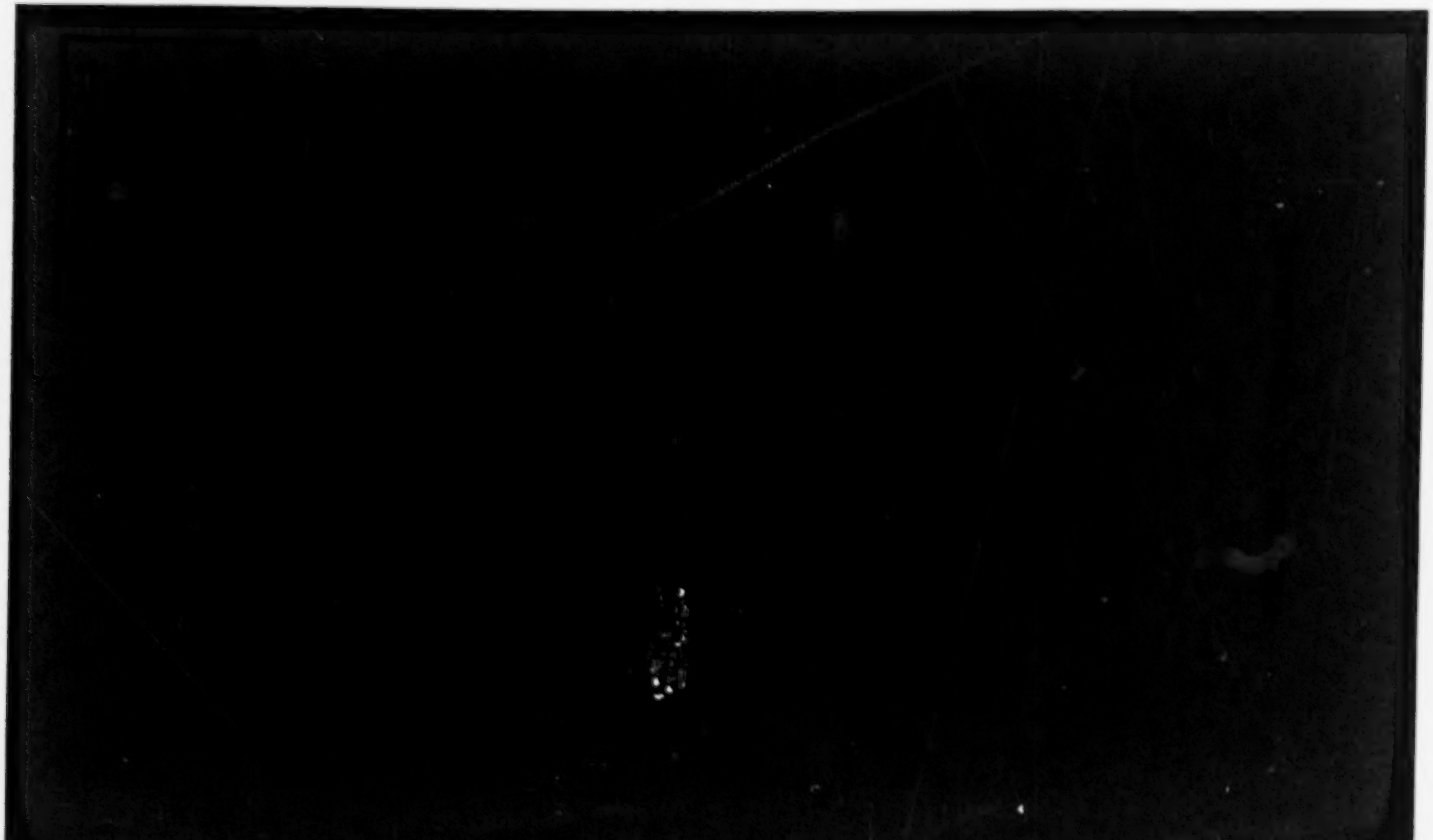
By FRANK P. FLINT,

Attorneys for Plaintiff in Error.

FRANK P. FLINT, and

HENRY S. VAN DYKE,

Of Counsel.



IN THE

SUPREME COURT OF THE UNITED STATES.

F. A. MILLER,
Plaintiff in Error,

vs.

F. P. WILSON, Sheriff of the County of Riverside, State of California,
Defendant in Error.

Number 112.
October Term
1914.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and ETHEL E. NELSON,
Appellants,

vs.

JOHN P. McLAUGHLIN, Labor Commissioner of the State of California, JOHN KEAN, Deputy Labor Commissioner of the State of California, and JOHN J. TOBIN, Deputy Labor Commissioner of the State of California; W. H. L. HYNES, District Attorney of Alameda County, State of California,
Appellees.

Numbers
362 and 363
October Term.
1914.

PETITION TO CONSOLIDATE.

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

Now come all parties to the above entitled appeals within, whom the Attorney General of the State of California joins and respectfully petition the Court that the said appeals be consolidated and heard together, and in support of this petition, your Petitioners show:

All appeals involve the validity of the California Eight Hour Law for Women. The appeal in the case of Miller relates particularly to the provisions of the Act applying to hotels. The Bosley cases involve the provisions of the Act as amended in 1913, prohibiting all women except graduate nurses from working more than eight hours a day in hospitals. The primary difference between the questions presented on the appeals arises only from the claim that the exception of graduate nurses operates to deny to other women working in hospitals equal protection of the laws. In other respects, the cases are substantially identical.

A decision on all questions at one time will greatly facilitate the transaction of the business affected by the legislation, and will put an end to all litigation concerning the validity of this statute. The presentation of the cases at the same time will also save the time of the Court and lessen the expense of the parties.

.....
Attorney General of the State of California.

.....
Attorneys for Plaintiff in Error Miller.

.....
Attorneys for Defendant in Error Wilson.

.....
Attorneys for Appellants Bosley et al.

.....
Attorneys for Respondents McLaughlin et al.

TABLE OF CONTENTS.

	PAGE
PRELIMINARY STATEMENT	1
FIRST.—Eight-Hour Laws for Women are Valid	3
I.—Women's Eight-Hour Laws in Private Businesses	3
II.—Eight-Hour Laws for Men and Women in Certain Private Businesses	4
1. Mines, or Mines, Smelters, Ore Reduction, etc.	4
2. Miscellaneous Private Businesses	5
III.—Eight-Hour Laws for Men and Women Telegraphers and Telephone Operators in Railroad Service	6
IV.—Eight-Hour Laws for Men and Women in Work Done in Private Business for National, State or Municipal Governments	6
V.—Eight-Hour Laws for Men and Women in Public Employments	7
SECOND.—The Classifications Made in Cal. Stat. 1911, C. 238, Are Not Arbitrary	9
THIRD.—The Classifications Made in Cal. Stat. 1913, C. 324, Are Not Arbitrary	11
1. The Recognized Evils of Employing Pupil Nurses, While Still in Training, to Perform the Duties of Graduate Nurses	11
2. Common Knowledge and Widespread Discussion of the Exemption of Graduate Nurses Before the California Act of 1913 Was Passed	30
3. General Condemnation of the Practice of Many Hospitals in Employing Pupil Nurses instead of Graduate Nurses for the Sake of Financial Gain	41

PAGE

4. Common Practice in the Best Hospitals of Sharply Differentiating Between Graduate and Pupil Nurses as to Capacities, Functions and Duties 52
5. Acknowledged Power of Associated Graduate Nurses to Improve Standards in Their Profession 63
6. Reasonableness of the 8-Hour Day for Pupil Nurses 69
7. Reasonableness of Not Exempting "Experienced" Nurses from the Scope of the Act 79
8. Reasonableness of Including Pharmacists Within the Scope of the Act 81
9. Status of Ethel E. Nelson 84
10. The Act Does Not Apply to Women Internes Acting as Physicians and Surgeons 85

LIST OF CASES CITED.

Ex Parte Anna Hawley, 98 N. E., 1126 10
Hawley *v.* Walker, 232 U. S., 718 ..... 1, 3, 10
Muller *v.* Oregon, 208 U. S., 412 ..... 1, 3
People *v.* Elerding, 98 N. E., 982 9
State *v.* Somerville, 122 Pac. R., 324 ..... 4, 10
Withey *v.* Bloem, 128 N. W., 913 10

Supreme Court of the United States,

OCTOBER TERM, 1914.

NOS. 112, 362 and 363.

F. A. MILLER,
Plaintiff-in-Error,

vs.

F. P. WILSON,
Sheriff, Etc.

WILLIAM B. BOSLEY, *et al.*,
Appellants,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California, *et al.*,

WILLIAM B. BOSLEY, *et al.*,
Appellants,

vs.

JOHN P. MCLAUGHLIN, Labor Commissioner of the State of California, *et al.*

Brief for Defendant-in-Error and Appellees.

The decisions of this Court in *Muller* v. *Oregon*, 208 U. S., 412, holding valid the woman's ten-hour law of Oregon, and *Hawley* v. *Walker*, 232 U. S., 718, holding

valid the woman's fifty-four-hour law of Ohio, would seem conclusive of the constitutionality of the eight-hour laws of California here in question,

First. Unless both Cal. Stat. 1911, C. 238, and Cal. Stat. 1913, C. 324, are to be held invalid as unjustifiably restricting liberty because the hours of employment permitted are reduced to eight.

Second. Unless Stat. 1911, C. 238, is to be held invalid as denying equal protection of the laws, because it includes within the prohibition:

(1) Hotels, but not boarding houses;

(2) Manufacturing establishments, but not "the curing, canning or drying of any variety of perishable fruit or vegetable."

Third. Unless Cal. Stat. 1913, C. 324, is to be held invalid because it includes:

(1) Hospitals, but not other institutions;

(2) Hospital employees generally, but excludes graduate nurses.

It is submitted that the Supreme Court of California and the District Court of the United States for the Northern District of California were correct in holding that the statutes did not violate the Federal Constitution.

FIRST. EIGHT-HOUR LAWS FOR WOMEN ARE VALID.

We submit that in view of the facts setting forth the world's experience concerning the hours of labor of women in industry, submitted to this Court in *Muller* v. *Oregon*, 208 U. S., 412, and *Hawley* v. *Walker*, 232 U. S., 718, it cannot be said that the legislature of California had no reasonable ground for believing that the public health, safety or welfare required generally the limitation to eight hours in one day and forty-eight hours in one week of women's employment in the businesses recited in the act of 1911.

Special attention is called to the following American legislation:*

I. Women's Eight-Hour Laws in Private Businesses.

District of Columbia. Act of Congress. Public 60, 63rd Congress, 2nd Session. In effect Feb. 24, 1914.

In any manufacturing or mercantile establishment, laundry, hotel, restaurant, telegraph or telephone office, or by any express or transportation company.

Arizona. Penal Code 1913, Sec. 717.

In any mercantile establishment, confectionery store, bakery, laundry, hotel, restaurant, telegraph or telephone office or exchange. Nurses excepted.

Colorado. Initiated law, approved by the People, Nov. 5, 1912. Acts 1913, p. 692.

In any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant.

*These acts are collected in Bulletin No. 148, United States Bureau of Labor Statistics.

WASHINGTON. Laws 1911, C. 37.
In any mechanical or mercantile establishment, laundry, hotel or restaurant. Exceptions: Harvesting, packing, curing, canning or drying of perishable fruits, vegetables or fish. Held constitutional. State *v.* Somerville, 122 Pac. Rep., 324.

II. EIGHT-HOUR LAWS FOR MEN AND WOMEN IN CERTAIN PRIVATE BUSINESSES.

1. *Mines, or Mines, Smelters, Ore-Reduction, etc.*

a. Men and Women:

ALASKA. Acts 1913, C. 29, Sec. 2.

CALIFORNIA. Acts 1913, C. 186, Sec. 1.

IDAHO. Rev. Code 1909, Secs. 1463 and 1464, amended Acts 1909, p. 4.

MONTANA. Constit., Art. 18, Sec. 4, Rev. Code 1907, Sec. 1734 and Sec. 1736, amended C. 21, Acts 1911.
Includes hoisting engineers.

NEVADA. Rev. L. 1912, Secs. 1941, 6554, 6555, 6557.
Includes mechanics, engineers, blacksmiths, carpenters, topmen and all surface employees.

OREGON. Lord's Ore. Laws 1910, Sec. 5058.

b. Men Only; Employment of Women Prohibited:

ARIZONA. Acts 1912, C. 28, Sec. 2, amended C. 26, extra session 1912 and Rev. Stat. 1913, Sec. 3108.
Includes hoisting engineers.

COLORADO. Constit., Art. 5; Acts 1913, C. 95, Sec. 2.

MISSOURI. Rev. Stat. 1909, Secs. 7813 and 7814a, added by Acts 1913, p. 399.

OKLAHOMA. Rev. L. 1910, Sec. 4005.

PENNSYLVANIA. Acts 1911, p. 102, Sec. 1. Hoisting engineers only.

UTAH. Comp. L. 1907, Sec. 1337.
WASHINGTON. Codes and Stats. 1910, Sec. 6583.
WYOMING. Constit., Art. XIX, Sec. 1; Comp. Stat. 1910, Secs. 3499 and 3500.

2. *Miscellaneous Private Businesses.*

a. Electric Light and Power Plants:
ARIZONA. Rev. Stat. 1913, Sec. 3099.

b. Coke Ovens:
ALASKA. Acts 1913, C. 29, Sec. 2.
ARIZONA. Rev. Stat. 1913, Sec. 3108.
COLORADO. Acts 1913, C. 95, Sec. 2.

c. Mechanics in State Institutions:
CONNECTICUT. Acts 1911, C. 282, Sec. 1.

d. Plaster and Cement Mills:
NEVADA. Rev. L., 1912, Sec. 6559.
ARIZONA. Cement mills only. Rev. Stat. 1913, Sec. 3108.

e. Plate Glass Works:
MISSOURI. Rev. Stat. 1909, Sec. 7814a, added by act, p. 399, Acts 1913.

f. Rolling Mills, Rod Mills, Blast Furnaces:
ARIZONA. Rev. Stat. 1913, Sec. 3108.

g. Tunnels:
ARIZONA. Rev. Stat. 1913, Sec. 3108.
CALIFORNIA. Acts 1913, C. 186, Sec. 1.
MONTANA. Rev. Code 1907, Sec. 1736.

h. In High Air Pressure:
NEW YORK. Consol. L. 1909, Sec. 134b, added by C. 291, Acts 1909, amended C. 528, Acts 1913.
NEW JERSEY. Acts 1914, C. 121.
(When air pressure does not exceed 21 lbs. to square inch.)

III. Eight-Hour Laws for Men and Women Telegraphers and Telephone Operators in Railroad Service.

Arkansas. Acts 1907, Act. No. 282, Sec. 1.

Connecticut. Acts 1909, C. 242, Sec. 1.

Maryland. Pub. Gen. L. 1911, Art. XXIII, Sec. 323.

Nevada. Act 1913, C. 283, Sec. 2.

New York. Consol. L. 1909, Sec. 8; amended C. 466, Acts 1913.

Texas. Rev. Civ. Stat. 1911, Art. 6586, Rev. Crim. Stat. 1911, Art. 1555.

West Virginia. Acts 1907, C. 59.

Wisconsin. Stat. 1911, Sec. 1816m.

IV. Eight-Hour Laws for Men and Women in Work Done in Private Business for National, State or Municipal Governments.

United States and District of Columbia. Act of Congress, August 1, 1892. amended by C. 106, Acts 1912-1913, Sec. 3738, and C. 174, Acts 1911-1912.

Alaska. Acts of 1913, C. 7, Secs. 1 and 2.

Arizona. Constitution, Art. XVIII.

California. Penal Code 1906, Sec. 653c.

Colorado. R. S. 1908, Sec. 3921.

Hawaii. R. L. 1905, Sec. 122, amended Act No. 11, Acts 1907.

Idaho. Acts 1911, C. 131, Sec. 1, amended C. 165, Acts 1913.

Indiana. Ann. Stat. 1894, Rev. 1901, Secs. 7052, 7053.

Kansas. Gen. Stat. 1909, Sec. 4643, amended C. 220, Acts 1913.

Kentucky. Acts 1910, C. 123, Sec. 1.

Maryland. Pub. Loc. Laws 1888, Art. 4, Sec. 31a, amended C. 94, p. 642, Acts 1910. Applies only to Baltimore.

Massachusetts. Acts 1909, Sec. 37, Acts 1911, C. 494.

Minnesota. Rev. Laws 1905, Sec. 1799.

Missouri. Acts 1913, Sec. 237. Applies only to cities of second class.

Montana. Constitution, Art. 18, Sec. 4; Rev. Codes 1907, Sec. 1739.

Nevada. Rev. Laws 1912, Sec. 6778.

New Jersey. Acts 1911, C. 243, Sec. 1; Acts 1913, C. 253, Sec. 1.

New Mexico. Constitution, Art. XX, Sec. 19.

New York. Consol. Laws 1909, C. 31, Sec. 3; amended C. 494, Acts 1913.

Ohio. Constitution Amendments 1912, Art. II, Sec. 37; Gen. Code 1910, Sec. 17-1, Acts 1913, p. 854.

Oklahoma. Constitution, Art. XXIII, Sec. 1; Rev. Laws 1910, Secs. 3757, 3758.

Oregon. Acts 1913, C. 1, Secs. 1 and 4.

Pennsylvania. Brightly's Digest, 1893-1903, Act No. 379.

Porto Rico. Rev. Stat. 1911, Sec. 1658, Acts 1913; Act No. 140.

Texas. Acts 1913, C. 68, Sec. 2.

Utah. Constitution, Act. 16, Sec. 6; Comp. Laws 1907, Sec. 1336.

Washington. Codes and Statutes 1910, Sec. 6573.

West Virginia. Code 1899, p. 1146, Secs. 1 and 2.

Wisconsin. Stat. 1911, Sec. 1729m.

Wyoming. Acts 1913, C. 90, Sec. 1.

V. Eight-Hour Laws for Men and Women in Public Employments.

United States and District of Columbia. Act of Congress, Aug. 1, 1892, amended C. 106, Acts 1912-13, Sec. 3738.

Alaska. Acts 1913, C. 7, Sec. 1.

Arizona. Constitution, Art. XVIII.

California. Constitution, Art. 20; Penal Code 1906, Sec. 653c.

COLORADO. R. S. 1908, Sec. 3921.

HAWAII. R. L. 1905, Sec. 122, amended Act No. 11, Acts 1907.

IDAHO. Constitution, Art. 13, Sec. 2.; Acts 1911, C. 131, Sec. 1; amended C. 165, Acts 1913.

INDIANA. Ann. Stat. 1894, Rev. 1901, Secs. 7052, 7053.

KANSAS. Gen. Stat. 1909, Sec. 4643 amended C. 220, Acts 1913.

KENTUCKY. Acts 1910, C. 123, Sec. 1.

MARYLAND. Pub. Loc. Laws 1888, Art. 4, Sec. 31a; amended C. 94, p. 642, Acts 1910. Applies only to Baltimore.

MASSACHUSETTS. Acts 1909, Sec. 37; Acts 1911, C. 494.

MINNESOTA. Rev. Laws 1905, Sec. 1799.

MISSOURI. Acts 1913, Sec. 237. Applies only to cities of second class.

MONTANA. Constitution, Art. 18, Sec. 4; Rev. Codes 1907, Sec. 1739.

NEVADA. Rev. Laws 1912, Sec. 6778.

NEW JERSEY. Acts 1911, C. 243, Sec. 1.

NEW MEXICO. Constitution, Act. XX, Sec. 19.

NEW YORK. Consol. Laws 1909, C. 31, Sec. 3; amended C. 494, Acts 1913.

OHIO. Constitution Amendments 1912, Art. II, Sec. 37; Gen. Code 1910, Sec. 17-1, Acts 1913, p. 854.

OKLAHOMA. Constitution, Art. XXIII, Sec. 1; Rev. Laws 1910, Secs. 3757, 3758.

OREGON. Lord's Ore. Laws, 1910, Sec. 5060; Acts 1913, C. 1, Sec. 4.

PENNSYLVANIA. Brightly's Digest, 1893-1903, Act. No. 379.

PORTO RICO. Rev. Stat. 1911, Sec. 1657; Acts 1913, Act. No. 140.

TEXAS. Acts 1913, C. 68, Sec. 1.

UTAH. Constitution, Art. 16, Sec. 6; Comp. Laws 1907, Sec. 1336.

WASHINGTON. Codes and Statutes 1910, Sec. 6572.
WEST VIRGINIA. Code 1899, p. 1146, Secs. 1 and 2.
WISCONSIN. Stat. 1911, Sec. 1729m.
WYOMING. Constitution, Art. XIX, Sec. 1; Acts 1913, C. 90, Sec. 1.

SECOND. THE CLASSIFICATIONS MADE IN CAL. STAT. 1911, C. 238, ARE NOT ARBITRARY.

This subject is fully discussed in Mr. Denman's brief, but it may be advisable to call attention specifically to the fact that

(1) The reasonableness of including hotels but excluding boarding houses was sustained also by the Supreme Court of Illinois in *People* v. *Elerding*, 98 N. E., 982.

This same classification was made also in the legislation of

DISTRICT OF COLUMBIA. Act of Congress, Public 60, 63rd Congress, 2nd Session.
ARIZONA. Penal Code 1913, Sec. 717.
COLORADO. Initiated Law. Approved by the People. Nov. 5, 1912.
IDAHO. Acts 1913, C. 86, Sec. 1.
ILLINOIS. Acts 1909, p. 212, Sec. 1; amended Acts 1911, p. 328.
KENTUCKY. Acts 1912, C. 77.
MONTANA. Acts 1913, C. 108, Sec. 1.
NEBRASKA. Rev. Stat. 1913, Sec. 3564.
OREGON. Lord's Ore. Laws 1910, Sec. 5037.
TEXAS. Acts 1913, C. 175, Sec. 1.
UTAH. Acts 1911, C. 133.
WASHINGTON. Acts 1911, C. 37.

(2) The reasonableness of including manufacturing establishments generally but excluding concerns engaged in "curing, canning or drying any variety of perishable fruit or vegetable" was sustained by this Court holding valid the Ohio act in

Hawley v. *Walker*, 232 U. S., 718,

and by the Supreme Courts of Michigan, Ohio and Washington in

Withey v. *Bloem*, 128 N. W., 913;
Ex Parte Anna Hawley, 98 N. E., 1126;
State v. *Somerville*, 122 Pac. Rep., 324.

This same classification was made also in the legislation of

California. Acts 1911, C. 258, Sec. 1; amended C. 352, Acts 1913.
Delaware. Acts 1913, C. 175, Sec. 1.
Maine. R. S. 1903, C. 40, Sec. 48; amended C. 55, Acts 1911.
Idaho. Acts 1911, C. 86, Sec. 1.
Maryland. Acts 1912, C. 79, Sec. 14.
Michigan. Acts 1909, No. 285, Sec. 9; amended Acts 1911, No. 220.
Minnesota. Acts 1913, C. 581, Sec. 1.
Missouri. Laws 1909, Sec. 7815; amended p. 400, Acts 1913.
New Jersey. Acts 1912, C. 216, Sec. 1.
Ohio. Gen. Code 1910, Sec. 1008; amended p. 555, Acts 1913. Declared constitutional, 98 N. E., 1126.
Pennsylvania. Acts 1913, No. 466, Sec. 3.
Virginia. Sec. 3657a, amended C. 189, Acts 1910, and C. 158, Acts 1914.
Washington. Laws 1911, C. 37.

THIRD. THE CLASSIFICATIONS MADE IN CAL. STAT. 1913, C. 324, ARE NOT ARBITRARY.

The propriety and necessity of including hospitals within the scope of the act arises from the character of these institutions. Women employed in the office or administrative departments of hospitals as bookkeepers, stenographers, etc., work under conditions common to such workers in manufacturing and mercantile establishments, etc., and need the same protection of the laws. Women employed in the housekeeping department of the hospital as cooks, cleaners, maids, etc., work under conditions common to such workers in hotels and restaurants and need the same protection of the laws.

The propriety of excluding graduate nurses is discussed in Mr. Denman's brief. But attention is called to the following data bearing mainly upon the occasion for the amendment of the law by Statute 1913, C. 324, so as to include hospital employees and upon the distinction between pupil nurses and graduate nurses.

1. The Recognized Evils of Employing Pupil Nurses, While Still in Training, to Perform the Duties of Graduate Nurses.

Various evils in the training of pupil nurses in hospitals have long been recognized by the nursing profession. Among these, the danger to the health of pupil nurses from requiring them to perform the arduous duties of the graduate nurses, in the operating rooms, wards or on private cases, in addition to their required

studies, has been a subject of repeated criticism. Evils are shown to result both to the pupil nurses, who are overworked, broken in health and deprived of legitimate instruction, and also to the patients, critically dependent upon their care.

As early as 1895 these dangers were forcibly pointed out at the very first annual meeting of the American Society of Superintendents of Training Schools for Nurses. At almost every subsequent yearly meeting the subject was agitated and remedies suggested.

Finally, 16 years later, in 1911, the Committee on Education of the Society, urged that a scientific investigation be made of the "whole question of the education of the nurse," on the ground that the "essential factors in the whole educational problem have not yet been touched—notwithstanding certain improvements in teaching in our schools for nursing, in the housing of our students, and in some slight degree in the hours of duty." The committee recommended a motion, immediately passed by the society, requesting the Carnegie Foundation for the Advancement of Teaching to make such a scientific study of the training of pupil nurses in hospitals, comparable to its famous investigation and criticism of medical schools. In 1912 the Committee on Education reported that the Carnegie Foundation was unable at present to undertake such an inquiry.

A new impetus was given to the subject by the publication in 1912 of Bulletin No. 7 by the Federal Bureau of Education, on the Educational Status of Nursing, by one of the best known leaders of the nursing profession,

Miss M. A. Nutting, late Superintendent of Nurses and Principal of the Training School at Johns Hopkins Hospital, Baltimore, now Director of the Department of Nursing and Health at Teachers' College, Columbia University. This Bulletin comprises the results of an investigation into the methods, hours of labor, and other features of the hospital training schools for pupil nurses throughout the United States. The evils shown to exist stimulated the agitation for ameliorations for the pupil nurses, especially a reduction of their hours of work. In the year following this publication, 1913, the California 8-hour law was amended to include pupil nurses.

A copy of Bulletin, 1912, No. 7, United States Bureau of Education, is filed herewith as Exhibit A.

Transactions of the American Society of Superintendents of Training Schools for Nurses, 1895. MRS. ISABEL HAMPTON ROBB, *Principal Johns Hopkins Hospital Training School for Nurses.*

I am sure that many of you have had some qualms of conscience at the way in which we are sometimes forced, I might almost say, to drive our pupil nurses through a two years' course. I assure you that I have had myself many anxious moments for the future of certain of my pupils as regards their health. It is well known that a combination of physical and mental labor is more exhausting than simple manual or simple mental occupation. It is true that for a time such a strain can be borne without producing any permanent injurious effects, and it is possible in most cases for women to stand the strain imposed upon them for two years, although I am afraid that not all of them come out of the trial unscathed. If, however, this high pressure is to be kept up for three years, I am sure that the health of the nurses will suffer. A woman who works physically over eight hours a day is in no mental condition to profit to any extent by class instruction or lectures. I maintain,

therefore, that the three years' course must not be considered at all unless the hours of practical work are shortened, but if the two changes can be made together, then the preservation of the health of the nurse and the extension of her education and training will be insured. This again will result in an increase in her competency and consequently will be productive of greater benefits to the patients who come under her care during her training, and after she has graduated. (Page 36.)

United States Bureau of Education Bulletin, 1912, No. 7. Educational Status of Nursing. M. ADELAIDE NUTTING, *Director Department of Nursing and Health, Teachers' College, Columbia University, New York, late Superintendent of Nurses and Principal of Training School, Johns Hopkins Hospital, Baltimore, Md.*

In speaking of hours it must be remembered that these statistics refer only to practical work in ward, clinic, operating room, or other hospital department, and not to any portion of theoretical work; that the 10 hours in question are required of the student irrespective of lectures, class, or study. This practical work, also, is in many of its aspects unusually exacting and fatiguing; much of it is done while standing, bending, or lifting; much of it is done under pressure of time and nervous tension, and to a considerable degree the physical effort which the student must make is accompanied by mental anxiety and definite, often grave, responsibility. Viewed from any standpoint, whatever, real nursing is difficult, exacting work, done under abnormal conditions, and all the extraordinary, subtle, intangible rewards and satisfactions which are bound up in it for the worker can not alter that fact.

Ten hours, or even nine hours, of work daily of this nature can not satisfactorily be combined with theoretical instruction to form a workable educational scheme. It is futile, and it should frankly be so conceded, to offer instruction to students who are unable through fatigue

to make the required mental effort, who can not, if they would, bring freshness, enthusiasm, or even intelligent interest to the subjects presented. The attention of tired students may be held by an exceptionally able lecturer for brief periods, but sustained work is out of the question. The student under these conditions not only loses the valuable knowledge which should illuminate every step of her work, but is liable through fatigue to misunderstand or misinterpret the instruction designed to afford her a safe basis upon which to build correct practical procedures. . . . Another aspect of these long hours, and one of extreme importance, is their bearing upon the health of student nurses. . . .

That long hours of ward work are, however, in most hospitals in the last analysis the main factor in causing, directly or indirectly, sooner or later, a heavy percentage of illness, those familiar with hospital life and its demands will not be disposed to doubt, and lowering the age of admission to schools becomes in its relation to prevailing hours of work a matter of the utmost importance. Dr. Frederic Lee, whose studies of fatigue in its relation to health are authoritative, makes the point that the fatigue resulting from long hours is far more serious in its effects upon such younger candidates as are now entering our schools—of such ages, for instance, as 18, 19 and 20—than upon the older student of former years. The shorter day, therefore, is seen to be important from the standpoint of the younger student, as well as from the effects of the longer (three years') course of training.

How largely the superintendents of training schools feel the need of improvement in this direction may be gathered from the fact that over two-thirds of the replies to the questions on this subject suggested shorter hours as advisable or necessary, that a large proportion of these stated their firm belief in an 8-hour day. . . . (Pages 31-32.)

Whatever changes may arise in the future in the system of educating nurses, this question of shorter hours certainly is a matter of immediate, paramount importance, and perhaps no one aspect of training-school

work has greater influence upon prospective candidates than this one of the long hospital hours. (Page 33.)

Tenth Annual Meeting New York State Nurses' Association, Albany, N. Y., October, 1911. "The Nurse Practice Act and its Administration. Dr. Augustus S. Downing, M.A., LL.D.

. . . Superintendents tell me that girls break under the strain. There are two causes, one because of the inability of the girl through her education to stand the mental strain which is put upon her and the other because of the long hours of arduous service in the wards. That is what is breaking the nurses in training. Not that these people would reduce this minimum education requirement, not that they believe that the nurse with this educational handicap is a desirable nurse, or that the pupil in training with this meagre educational equipment is capable of being trained to highest efficiency—they never argue that. They simply say, she will do. . . . (Page 82.)

New York State Educational Department. Report on Higher Education in the State of New York for the School Year Ending July 31, 1912.

The Overstrain of Nurses.

This subject was considered of sufficient importance to be assigned an entire session at the International Congress and was dealt with in a paper of which only excerpts have as yet been received by Dr. Hecker of Strasburg. The following resolution governing this subject was passed:

Whereas: With the advance made by scientists in the study and comprehension of the human mechanism and with the new knowledge regarding the nature and effects of fatigue upon the human organism, it is seen to be unscientific and wasteful to destroy human capacities by overstrain;

Resolved: That we earnestly beg hospital authorities to give the same consideration to the problem of overwork among nurses that industrial leaders are giving to the question of overwork among workers in industry in order that the present grievous destruction of the health of nurses may cease.

Said the British Journal of Nursing: "Dr. Hecker paid a high tribute to the standard of nursing in the United States stating that in the new world nursing had been founded on the basis of a recognized profession." Whether we are entitled to the tribute is a question; the time spent daily by the pupils in practical work in the schools of nursing does not show a proportion of theoretical to technical instruction that would be permitted in any professional or even technical school, nor does it present us as unerring in the question of overstrain. The statistics submitted in the annual reports of the registered schools show the average number of hours weekly on ward duty in the day time to be sixty-two and the night duty almost universally eighty hours. The lectures and recitations number upwards from five a week and are held either during the so-called hours of recreation or in the evening. No time except in the few schools that have established preliminary courses is allowed for study. The institutions most erring in this matter are the hospitals under the religious orders where the weekly average is 67, and the State hospitals for the insane, where the weekly average is 77.8. . . . That State hospitals should be allowed to require such hours is incredible and does not seem in accord with the desires of the community as expressed in the 54-hour labor law for women and children recently passed in this State. The age of admission in many of the schools has fallen in the past few years from 23 to 19, 18, and even 17. That pupils so immature should be placed after a few months in the hospital, frequently less than three, in sole charge of from ten to sixty patients and without relief for eleven to twelve hours nightly is little short of cruelty. Such long hours and such responsibility produce not only physical weakness, but a dullness of the

perceptions and sensibilities with a resultant deterioration in the quality of the service rendered and are therefore as detrimental to the patients' welfare as to the pupils'. It is urged that some decisive step be taken to overcome this evil. . . . (Pages 239-40.)

Proceedings of the Thirteenth Annual Convention of The American Society of Superintendents of Training Schools for Nurses, Philadelphia, May, 1907. The Physical Effect of the Three Years' Course. By M. HELENA MCMILLAN.

It would seem that a good deal of thought on the part of hospitals has been and is being given to the welfare of their nurses, but with all that consideration there is room for much improvement, while unfortunately two conditions still remain which cannot but affect the health and happiness of the pupil nurse. I mean the long hours of duty, particularly of night duty, and the evening class or lecture. When night comes, the nurse is incapable of profiting by even the most wisely arranged course of instruction, and her energies are mainly required to keep herself awake. This must be especially the case when a day's work of twelve hours' duty has just been completed. Two schools frankly acknowledge their pupils working twelve hours a day; others ten hours a day and eleven at night; the majority claim a nine-hour day with twelve-hour night; some an eight-hour day with no information as to the night. The eight-hour day, on many occasions in the nurses' life, lengthens itself into eight and a half, nine, or even more hours; for the same good reasons a twelve-hour day, doubtless, at times, becomes thirteen or fourteen. Even worse than the long day is the twelve-hour night duty, because it is both more common and more difficult. The average woman does not sleep well in the daytime; our hospitals are busy places, by night as well as by day, and the night nurse is apt to be hard worked from the time she goes on duty until released, twelve or more hours later. As the services of a tired woman cannot be of the best, from the stand-

point of the hospital and of the patient, it would seem wise to shorten the working hours of the pupil nurse. (Pages 48-49.)

. . . It really seems that the time has come when ancient regulations (such as twelve-hour duty) will no longer be tolerated and we will be compelled to abolish such and substitute modern organization. (Pages 49-50.)

Miss McMillan: I think the women who complete their training are all in better condition, but I think that if we had shorter hours we would have fewer drop out.

Miss Goodrich: I agree with Miss McMillan that shorter hours and an admitting physical examination, which would probably eliminate a great many delicate pupils, would make the health record higher. Where it is necessary to take our pupils without such examination, you must necessarily have a large force who are not strong, and where you are, of course, unable to relieve them from duty because of the great demand in the hospital service, you again find your pupils taking a longer time to recover, even from an attack of tonsilitis. (Pages 50-51.)

Proceedings of the Seventeenth Annual Convention of The American Society of Superintendents of Training Schools for Nurses. Boston, May, 1911.

President's Address.

We believe on the whole that shorter hours should be encouraged in all our schools. A ten or twelve-hour day of such strenuous occupation and close attention to detail can but vitiate the nurses' force and this must react unfavorably upon the patient. . . .

More exactness in granting the time off duty would help immensely. The exigencies of the hospital should not interfere too often. The hospitals and schools too are being helped considerably, though they little realize it, by the growing demand of patients for more constant attention from the *unworn, untired* nurse. (Pages 23-4.)

Ibid. Report of the Committee on Education.

As for hours of work, it must be confessed that it fairly staggers one to be obliged to state that out of 118 schools reporting on this question 50 state frankly that the working day of their pupils is 10 hours, while 18 go farther and announce an 11 or 12-hour day, and 83 out of 116 schools report a 12-hour night duty. It must be remembered that we are dealing with representative schools of high standing, and that out of 230 to which we appealed for information we have found but 20 in which an 8 or 8½-hour day appears to be the rule. This whole question of hours of work needs careful and prolonged study and should be held over for another year for that purpose. What we need to get at are the reasons for these discreditably long hours, and we think we should be able to find them and present them in such a way as to have some helpful effect upon both schools and hospitals. (Page 74).

Miss Van Blarcom. I made such a change in St. Louis when I took the superintendency of that training school. The so-called ten-hour system was in operation, and I had been accustomed to the eight-hour system, which I much preferred. I had permission to make the change provided I didn't increase the staff of nurses. There was some opposition in the hospital and it was difficult because no one else there understood this possible adjustment of hours. It is a small hospital, of course, 150 beds. But we did make the change and we did carry on the work of that hospital under the eight-hour system. I was very careful to have the nurses go off on time as well as to come on, even though some of the work might be left undone. After a few months' time the nurses themselves saw the advantage of it. To my mind there is really no comparison between the two systems. The physical condition of the nurses seemed to me distinctly better. Their class work came up, and the work throughout the hospital wards was certainly better. We attributed this to the freshness of the nurses because of their lengthened hours off duty. I may say that we made this change and did the work without increasing the staff,

and also took over work not usually done by the nurses. (Page 78.)

Miss Van Blarcom. I found that under the ten-hour system they were allowed to come on duty from ten minutes to half an hour late and round off in the same manner. They were tired out and distracted and didn't eat and didn't study; in fact, they didn't do much of anything but lounge. In the eight hours they did the work and the results were satisfactory. Miss Stanley asked me what happened to the superintendent in working out the system. Of course I did pay a heavy price, but it was good for the hospital, and I am glad to say that it has been continued by my successor. (Page 79.)

Miss Goodrich. I think perhaps a little study I made at one time might be of interest. I prepared statistics of the days of illness in one school. When I began the number of pupils was from 70 to 80. The number of days' illness during the year was 770, with a force of not over 75 nurses. This was reduced to 450 days, with an increase in the force to about 100 nurses. These statistics are not on the eight-hour basis, but an increase in the staff of nurses, with the ability to insist on the hours of recreation, enabled us to make that reduction in the days of illness. (Page 80.)

The Role of the Visiting Nurse in the Campaign for Public Health. Report of the Fourteenth Annual Convention of the Nurses Associated Alumnae of the United States, 1911, by C. E. A. WINSLOW, *Associate Professor of Biology, College of the City of New York, and Curator of Public Health, American Museum of Natural History, New York.*

It is a matter of common knowledge that most hospital training schools are not prepared to meet these new needs and cannot meet them without external aid. Over a thousand such schools have come into existence since 1890, but their establishment has been inspired less by educational ideals than by the desire to obtain unpaid assistance in the routine work of the hospital itself. Too

often standards of admission, which are of such importance in a profession demanding unusual physical and mental and personal qualifications, are sacrificed to the need for student nurses to do the work. Too often the applicant, once admitted, is subjected to severe conditions of overwork and underfeeding and poor living accommodations. . . . Most fundamental of all is the problem of time. It is absurd to attempt to train the nurses we need for the public health campaign by a course which involves two or three hours a week of theory and fifty to sixty hours in the wards, not hours of clinical instruction, but for the most part a routine of unenlightening and exhausting manual work. . . . (Page 918.)

Proceedings of the Eighteenth Annual Convention of the American Society of Superintendents of Training Schools for Nurses, Chicago, Illinois, June 3-5, 1912. "The Night Staff in a Hospital," by Miss Anna C. Jammé.

The overworked night nurse—the nurse who fairly runs from 7 p. m. to 7 a. m., from whom the impossible is demanded, and who appears mentally and physically depleted in the morning to give her report to her head nurse, is no credit to an organization. How often is the superintendent, in her morning rounds, met with the complaint from patients or doctors of inadequate care during the night. . . . For the patient of moderate circumstances, who cannot employ a special nurse during the entire period of illness, would derive great benefit by having a graduate special for the first few nights after operation or during a critical period. The twelve-hour duty for student nurses seems as yet quite prevalent, except where the eight-hour system is established.

Bearing in mind that our students usually reach the period of their first night duty early in the course of their training—some before the first six months are passed—they are, in all probability, immature, timid, or physically unable to meet the situations that arise and the long strain of the night. . . .

In the private wards the graduate special nurse is almost wholly in evidence now, the necessity for her having arisen, to a great extent, from inadequate general service, many patients preferring to sacrifice in other ways, in order to have the comfort of getting what they want at the time they want it. . . . (Pages 174-175.)

The Modern Hospital. St. Louis, Mo. January, 1914.

California's Eight-Hour Fight.

Mrs. Charles Farwell Edson, discussing the matter a few days ago before the women members of the Railway Mail Auxiliary at Los Angeles, spoke partly as follows:

> "It has been demonstrated by practical statistics that 95 per cent. of the women who come under it are materially benefited by the law, and consequently an amendment was added during the last session of the legislature including the student nurses. Graduate nurses are still permitted to work as long as they choose, but we felt that it is unfair to the public to permit student nurses to be put on cases that require skilled attention and kept on them for weeks at a time at the rate charged for trained nurses. That frequently has been done to the detriment of the nurse and the patient. Since patients dislike a frequent change of nurses, it becomes necessary for trained nurses to attend only to serious cases, which is good for the enforcement of the eight-hour law, but which has excited the animosity of the commercial hospitals, which are forced to pay higher wages for skilled attention. But the public benefits, if the hospitals do not, from this change." (Page 62.)

The Modern Hospital. St. Louis, Mo. November, 1914. Editorial Comment.

Pupil Nurses a Hazard to Patients.

Dr. D. S. Fairchild, of Clinton, Iowa, one of the best known surgeons in the West, recently stated in a medical

paper that patients were being sacrified in the interest of nurse training in his home city. . . .

In a final analysis, becoming angry with Dr. Fairchild will not disprove any of the charges that he has made. It seems to us the question is whether what he stated was true or not—namely, that the training of nurses was a hazard to patients, and, if the charges are true, whether there is a cure for the situation.

It is very certain that the training of pupil nurses, coincident with the care of patients in hospitals, is an extra hazard to patients, and it is quite as certain that many patients lose their lives every year at the hands of pupil nurses, but it is not so sure that there is a cure for it. . . . No pupil nurse can handle a patient as well as a trained graduate nurse, of course; . . . it seems, therefore, that Dr. Fairchild's charges are entirely true that pupil nurses are a hazard to patients, and many will be in entire sympathy with Dr. Fairchild's attitude in drawing attention to the matter. . . .

The operating room and the maternity department are two sections of the hospital where lives are at stake every instant, and a wrong step can be taken by a nurse before anyone can interfere, whereas in most of the other departments of the hospital there will be time enough after the nurse makes a mistake to see to its correction.

It is presumed that it was Dr. Fairchild's idea to call attention to this matter of nursing care in order that it might receive more attention than it had been receiving. If some of the hospital superintendents who have stopped long enough to abuse Dr. Fairchild for his charges, and if some of the trustees who have barred him from their hospitals would spend as much time thinking about whether his charges are true or not as they have in abusing him for making them, more good would be accomplished. (Page 314.)

Proceedings of the Twentieth Annual Convention of the National League of Nursing Education. St. Louis, Mo., April 23 to April 29, 1914. Address Miss Clara D. Noyes, *President of the National League of Nursing Education.*

We must bear in mind, however, that as long as our schools are dependent upon the wards of hospitals for use as our special laboratories for our student nurses, then the vital problem of the care of the sick and injured becomes for us a very grave responsibility. (Page 18.)

We shall hear, at these meetings, something about the practical results obtained after a year's trial in California of the famous "forty-eight hour" law which affected the student nurse. While many of us are filled with very deep regret that the long working hours, which have very generally prevailed in hospitals, made it necessary for an outside body to "deliver the pupil from bondage," yet we are sufficiently honest and courageous to publicly acknowledge that radical action of this kind was unquestionably required to arouse those in authority in hospitals and training school boards and even the superintendents of such themselves to the fact that some attention must be paid to this burning question of long hours. . . . (Page 20.)

Discussion—Age Standards.

Miss Powell (Superintendent, University of Minnesota Hospital Training School). I would like to know what the experience of the older superintendents is as to the way in which the younger students stand the work. The school I have is young and there have been few students, but in the four years one student (who was accepted before I went there, at twenty years of age) was apparently strong and healthy at the time I took the school, at which time she had been in eighteen months, gave way in the middle of that year. It seemed to be a case of nerves. We could not find anything physical. The girl was fat and strong, her color was good and she was not anemic, but she had to give up the work. Since that time I have had one other student who

was accepted at 20 years of age. I find you have to watch the girls of 20 much more closely than you do those nurses that are older, I mean, from a physical standpoint. You have to take them off duty for a day occasionally and give them a rest. They do not seem to me to be able to stand the strain of the work. It gets on their nerves, and they begin to look pale and do not sleep, and lose their appetite. I do not know why it is, for our conditions, while not ideal, are above the average of a good many schools. I would like to know what the experience of the older superintendents is, whether they notice any difference. I rather dread students coming in at twenty, and I don't take any under twenty. . . . What is your experience, Miss Parsons?

Miss Parsons (Superintendent, Massachusetts General Hospital). I find that those young nurses have to be watched carefully. I also find that the other nurses have to be watched carefully. . . . I do think, however, that just as many of the young nurses get through without illness as of the older ones. They have a certain buoyancy that sometimes offsets the strain that the older women seem to feel somewhat more keenly. (Pages 163-164.)

Ibid. The Eight-Hour Law as applied to Student Nurses. Miss Lila Pickhardt. *Pasadena Hospital Association, Pasadena.*

Recent Legislation Governing Hours of Duty of Pupil Nurses in Hospitals.

. . . It is all too long a story to take up adequately in a brief report why students in schools for nurses in the state of California are included in the 8-hour law for working women. Considering nurses in the school as employees of the hospital, permitting them to pay for their tuition by accepting their services and as a compensation giving a little desultory teaching, offering housing accommodations wholly unsanitary, supplying food poorly cooked and indifferently served, and demanding unreasonably long service on special cases, are

a few of the many reasons why nurses themselves revolted against the injustice shown them. . . . (Page 108.)

The Pacific Coast Journal of Nursing, March, 1913. Editorial Comment.

. . . Women superintendents are prone to try to carry all the burdens and responsibilities that thoughtless or inconsiderate boards place upon them, and in turn they not infrequently inflict too long hours and too great a nervous strain upon their young pupils. The attention of such superintendents is respectfully called to a paper on "The Supply of Pupil Nurses and Nursing Standards," by F. A. Washburn and Louis H. Burlingham of the Massachusetts General Hospital, which appears in the January issue of the International Hospital Record. The following excerpt is taken from the paper mentioned:

> The hours of duty should be reasonable. Once a nurse has become accustomed to her work she should not be so tired at the end of her day that her only desire is for her room and bed. She should have enough energy remaining in store to permit of her doing such mental work as is needed in the preparation of her recitations, attending lectures and demonstrations, and for healthful amusements. *We feel that the proper daily period of duty for the day nurse is much nearer eight than twelve hours.* . . . (Page 101.)

The Pacific Coast Journal of Nursing, June, 1913. Editorial Comment.

. . . The chief argument against the law which was constantly used by a stockholder in a hospital through weeks of lobbying was to the effect that unless they were permitted to place their pupils on private cases in the hospital, to remain in charge of these patients during the twenty-four hours of the day and throughout the days

or weeks of illness, said pupils could not be properly trained to care for private patients in their homes, therefore the hospital would fail of its obligation to the pupil to equip her for her life work. This argument impressed some of the legislators as plausible. In discussing this phase of the question with members of hospital boards we assumed that it was quite legitimate to place a pupil on private duty in the hospital during three months of her senior year, and that this was quite sufficient to fit her for similar service after graduation. We have always contended that hospitals do a wrong to their patients and pupils when juniors, or probationers, are placed on private duty. This is no uncommon occurrence in California. We have learned recently of a *first year pupil* even being put in charge of an operating room in one of the large hospitals. (Pages 243-4.)

Ibid. Letters in re the Eight Hour Law. Los Angeles, Cal.

To the Editor: I have been greatly interested in your editorial respecting the eight hour law. You have asked to hear from pupil nurses, and as I am a very recent graduate, I feel that I can speak more from the standpoint of a pupil nurse than that of a graduate.

I think it is more than time to take up the matter of hours of duty for pupil nurses. I should not like to see it regulated by law, but I do heartily approve of such legislation administered by the state board of education or by a special board appointed, this point to be determined when the time comes for its consideration.

I feel confident it would be a great factor in raising the standard of education for nurses.

I found the theoretical instruction of my training most interesting when I first entered training, for I have always enjoyed work as a student. But I soon found it impossible to have any freshness or enthusiasm, nor was I able to give even intelligent interest in the subjects so great was the fatigue of body.

A nurse's work is done under pressure of time and

nervous tension, particularly the work of the pupil nurse. How very necessary it is for the nurse to be alert and equal to the very best that is in her. How is this possible with such long hours of duty? . . .

Relaxation is as necessary to good work as activity, we crave rest only after surfeit of activity. I am sure they would make better nurses, too, as graduates. When a nurse spends three years of daily ten to twelve and many times longer hours of duty, what can she have left of enthusiasm or energy by the time she is ready to take up the work as a graduate nurse? . . . Olive Cullison McNeil. (Pages 275-6.)

Tenth Annual Meeting New York State Nurses' Association. Albany, N. Y., October, 1911.

Report of Training School Inspector.

. . . Attention has been called recently in our magazines and at our meetings to the fact that the admission age of the pupil has fallen in the last few years from 23 to 18 and 19. The pupil comes to us, therefore, still at the formative period and at a most impressionable age.

She enters upon arduous duties and meets situations that are a great test of physical strength and of character. It is obvious that she needs all the mental and moral help that can be provided and institutions admitting pupils at this age should be prepared to provide most carefully selected teachers and supervisors to guide their pupils. A study of the schools shows that in the institutions where the pupils are the youngest the daily hours of duty are the longest, the supervision very frequently the smallest and the least time is provided for such attendance, rest and recreation on Sunday. . . . (Page 48.)

2. Common Knowledge and Widespread Discussion of the Exemption of Graduate Nurses Before the California Act of 1913 Was Passed.

Public discussion of the extension of the 8-hour law to include women employed in hospitals, except graduate nurses, was widespread in California and began almost a year before the law was finally enacted.

The proposal to exempt graduate nurses was prominent throughout and was based on the legitimate and recognized differentiation of the functions of the graduate nurses in hospitals and the unavoidable exigencies of their work.

The Modern Hospital. St. Louis, Mo., September, 1914. California and the Eight-Hour Law. Anne A. Williamson, R. N., *Superintendent of Nurses, California Hospital, Los Angeles, Cal.*

On the statute books of California has been placed a law which presents the most serious problem that has ever confronted the American training schools for nurses, stubbornly fought from the time of its conception down to the final scenes.

In the year 1911 a bill was passed in the California Legislature which was known as the "Eight-Hour Law for Women." This bill, which in the course of time became a law, limited the working hours of women employed in any mercantile, mechanical, or manufacturing establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, to eight hours a day for six days in the week. At first the feeling among these different establishments was one of consternation, as it meant so much readjusting of hours and in many instances the substitution of men in the places where women had been employed. But the American is re-

sourceful, and in most instances the matter was worked out to the satisfaction of the employer and the patron, although not always to the satisfaction of the employee. . . . But the minor difficulties were ignored; the bill had passed and must be enforced. Department stores rearranged their hours, restaurants employed more men and fewer women, laundries abolished their early closing days, the high cost of living was made still higher, and not much disturbance was caused by the new regime. . . . Early in the year 1912 the first indications of the intentions of the labor party were seen in the form of communications to the different nursing organizations in regard to the proposed amendment to the law already on the statute books. The main change that was sought was to include nurses in the eight-hour law, and the representatives of the state association were asked to give their opinion in the matter. On January 23, 1912, this came before the regular meeting of the council and the following resolution was passed: "Resolved, that the California State Nurses' Association do not indorse a bill including nurses under the eight-hour law for women." About that time the several county associations were approached with the same question, and, while answers were sent, it must be confessed that at the time the proposition seemed so absurd and so unworthy of any consideration by a body of professional women that scant attention was given it.

But steadily on came the tide, and while the year was yet young the intentions of the advocates of the eight-hour law were all too apparent, but not until early in the spring, and after the proposed bill had been given a great deal of newspaper notoriety, did the hospital authorities wake up to the fact that the bill was fast winning its way into favor, and was sure of passage through both houses and of the governor's signature. It was then too late to do much; meetings were held and resolutions passed and protests sent to Sacramento, now the seat of war, but the hospitals were not organized, and the nurses' associations in the state could not be made to take sufficient interest in the matter. . . .

The bill, as originally drawn, included all nurses, but

it was argued that the graduate nurse had the same status as a physician, and that to put her under the law would be both a hardship and an injustice. While the bill was still in committee a public hearing was announced, and several hospitals as well as nursing organizations sent representatives to speak before the committee. Great was the excitement all over the state the night set for the hearing and all who could be present were there, the large assembly chamber of California's capitol being crowded with interested listeners. . . . Many good points were brought out by both sides, but popular opinion was in favor of the bill, and the newspapers all over the state came out the following morning with large headlines and glowing accounts of the great humane measure before the Legislature; so no one was surprised when a few days later the bill was reported favorably out of committee, with recommendation that it pass.

Time went on, and the bill gained in favor and was set for a special order for a certain Tuesday. In response to a telegram sent to Los Angeles from those opposed to the bill, the writer went to Sacramento to help during those last days. I found things much as I expected they would be from the newspaper accounts, except that the feeling was stronger in favor of the bill than we had thought possible. Strange tales had been told of hardships and injustice in some training schools —conditions that may have existed and may not, but the telling of which had its effect on ears always ready to listen to the sensational . . .

Perhaps the description of the passage of the bill by the Senate can best be given by quoting from a San Francisco newspaper:

> Sacramento, May 1.—The fight for an eight-hour day for pupil nurses, which started on the floor of the Senate yesterday morning at 10 o'clock, came to the victorious conclusion at midnight. The bill finally passed with a vote of thirty-two ayes and no noes. The Senators who led the determined opposition came under the wire at the last minute after they had exhausted every possible means of excluding pupil nurses from the bill. . . .

In the evening, Senator Caminetti again championed the bill, introducing statistics from physicians showing the detriment of overwork, and drew a clear analogy in its application to the measure at issue. Notwithstanding the avalanche of telegrams which descended on the Senators' desks and the Niagara flow of eloquence turned loose, all the amendments were voted down and the bill passed. The senate chambers and galleries were crowded all day with women interested in the passage of the bill and many of the wives of the assemblymen, some of whom have been nurses, stayed until the last gun was fired.

About two weeks after the bill passed the Senate it reached the floor of the Assembly, and after much argument and an all-day session, continuing until after 2 a. m., it finally passed and was sent to the governor. Even then the training school authorities did not give up. Letters were written to the governor, and representatives were sent to Sacramento to be present at the hearing that he gave on all important bills before signing them. . . .

The bill was signed June 14th, 1913. (Page 184.)

The Pacific Coast Journal of Nursing, August, 1912. Editorial Comment.

A movement is on foot to have the state law limiting the work of women to eight hours per day extended to pupil nurses in the training schools. We will not enter into a discussion at this time, but we wish to bring this to the notice and consideration of our county and state legislative committees. We ask these committees to look into this matter carefully, to gather data from the large schools in the East and Middle West, where pupils are now training under the eight-hour system. It is quite likely that valuable data may be obtained from Professor M. Adelaide Nutting in the department of nursing and health at Teachers' College, Columbia University,

New York. We request that our state committees confer early and report on the subject for the benefit of the Journal readers. Later we shall wish to hear from superintendents of training schools and from pupil nurses as well. (Page 353.)

The Pacific Coast Journal of Nursing. March, 1913. Editorial Comment.

There has been more or less agitation in California since the passage of the eight-hour work day law in 1911 for women in industry, to extend the protection of that law for the benefit of women in other lines of work. A measure is before the present legislature which will, if it passes, include women in widely separated occupations, limiting their hours to eight per day and to forty-eight for the week. . . .

Without doubt the majority will agree there *should* be a limit to the duty hours in hospitals. The difficulty is in deciding in all fairness to patients, nurses, and institutions just what that limit shall be. . . .

Neglect during the past thirty years to establish system and order that would do justice to all parties, safeguard the health of the nurse, develop her efficiency, and tend to increase her working years has now caused the "outsider" to hearken to the appeal of the pupil nurse. . . .

The pupil nurses may be, and are, subjected to long, taxing hours of work and vigil ranging anywhere from twelve to eighteen hours for some days on a steady stretch, or to *twenty-four hours* in practically one straight vigil. To change and regulate this human—or inhuman—disregard for the women workers, may for a time interfere with the smooth running routine and exchequer of the institutions. . . . (Pages 98-9.)

The Pacific Coast Journal of Nursing. April, 1913. Editorial Comment.

Enforcement of the Provisions of the Present Act. . . . The nurse educators throughout the country are endeavoring to raise, year by year, the standard of

education for nurses, in order to keep abreast of the advance being made in medical science and the better to qualify the representatives of the nursing profession to fill with credit the many offices in public health service to which they are constantly being called. Therefore, while many members of the profession would and do heartily approve of regulating and limiting the duty hours in hospitals, their efforts would be, if the hospitals fail to regulate the hours, to have such a regulation law administered by the state board of education, or preferably by a special board appointed and conversant with the aims and requirements in nurse education. . . . (Page 147.)

The Pacific Coast Journal of Nursing. May, 1913.
Editorial Comment.

The hue and cry in California over the proposed law being extended, as amended, to pupil nurses and excluding the graduates still continues and no doubt will continue until such law is passed, even though it should not be passed during this session of the legislature, in which event it is more than probable, judging from the attitude of the lawmakers, that it will return when they return. The testimony and evidence which have reached them seem to convince them that pupil nurses might very properly be accorded a more fair amount of consideration as a mere matter of health preservation.

When the first inkling to include pupils in the provisions of the eight-hour law came to notice it was somewhat of a shock. This is without doubt the effect it has had on hundreds of people since the present agitation began, and it takes time to recover from the effects of it, but when we consider that the offending hospitals must be in the majority we must also recognize our duty to the nurse in the making. . . . (Page 195.)

. . . Discussion pro and con waxed warm among nurses and pupils. A half dozen or less superintendents of the training schools met and for the first time had something to discuss that had enough spark of real life

to keep them from napping. This same matter was discussed at the regular meeting of the executive committee of the San Francisco County Nurses' Association on March 3 and favorably passed upon as far as it would apply to pupil nurses only, and at the regular monthly meeting of the association, held on March 4, the members present approved unanimously the vote of the executive committee.

This report going forth stimulated the growing interest in the question, and it seemed advisable to call a special executive committee meeting to consider the question of giving the three groups of nurses—superintendents of training schools, graduate nurses, and pupils an opportunity to be heard. This executive committee meeting was held March 11. . . . The decision of this meeting was that a mass meeting be called, notice of which be sent to each member of the association, also to hospitals, nurses' registries, and to all nurses in San Francisco whose addresses could be obtained, and to the president and secretary of the Alameda County Nurses' Association, as well as to the heads of the training schools in that county. It was decided not to extend an invitation to physicians, since it was the consensus of opinion of the committee that nurses and pupils would feel more free to give expression to their honest convictions if among nurses only. Therefore, the following postcard notice was sent to all members and hospitals:

Mass Meeting at Lane Hall, Sacramento Street, Near Webster, Tuesday Evening, March 18, at Eight O'clock.

A mass meeting of nurses and pupils in training is hereby called to afford opportunity for free and open discussion of the senate and assembly bills extending the provisions of the eight-hour day and forty-eight-hour week law to members of the nursing profession.

San Francisco County Nurses' Association, Inc.
Genevieve Cooke, President.
Sophia L. Rutley, Secretary.

It was decided to engage an expert stenographer to

report the meeting as a matter of record. It is estimated that there were between 350 and 400 present at the mass meeting. Ten of this number were superintendents.

In opening the meeting the chairman stated clearly the object for calling such meeting. After hearing expressions of views fully the chairman asked if it be the wish of the meeting to nominate representatives from among the superintendents, nurses and pupils, or should the chair appoint a committee of nine to draw up resolutions for adoption to be sent to the legislature. The latter plan was requested, and the following were named for the committee: Superintendents—Miss MacArthur, in charge of Lane Hospital; Miss Olmsted, in charge of Hahnemann Hospital; Miss M. Taylor, in charge of East Bay Hospital, Oakland. Nurses—Miss Theresa Earles McCarthy, graduate of St. Luke's Hospital, San Francisco; Miss Ida B. Cain, graduate of the California Woman's Hospital, San Francisco; Mrs. F. Stebbing, graduate of the McNutt Hospital, San Francisco. Pupils—Miss Janet Bain, St. Francis Hospital, San Francisco; Miss Madeline Furlong, Children's Hospital, San Francisco; Miss Douglass, St. Luke's Hospital, San Francisco. This committee repaired to an adjoining room and was out between half and three-quarters of an hour. Meantime, informal discussion was carried on. When the committee returned, Miss Olmsted, who acted as chairman, read the following majority report:

> *Resolved*, That we, representative superintendents, graduate and pupil nurses of San Francisco and Alameda Counties, do hereby in mass meeting assembled endorse the sentiment of the California State Nurses' Association* in eliminating the word hospital from the senate bill 466 and assembly bill 858.
>
> (Signed) Sarah C. Olmsted, R. N.
> Harriet MacArthur, R. N.
> Minnehaha Taylor.
> Evelyn S. Douglass.
> E. Florence Stebbing.

*This should have read a quorum of the Council of C. S. N. A.—three members, expressions of council in full, eleven members, not having been received in time.

Quite a bit of handclapping followed. Then Miss McCarthy arose and stated that she desired to present the minority report, and read as follows:

> WHEREAS, We do heartily approve of any measure that will lessen the working hours of pupil nurses; therefore be it
>
> *Resolved*, That we, representative graduate nurses and pupils of San Francisco, do hereby approve of the senate bill 466 and assembly bill 858 as amended to exclude graduate nurses.
>
> (Signed) IDA B. CAIN.
> THERESA EARLES MCCARTHY.
> JANET BAIN.
> MADELINE FURLONG.

The applause that followed the reading of this minority report was loud and long. When a semblance of quiet had been restored, Miss Belle Espeset arose and moved the adoption of the minority report. This was quickly seconded by Miss Anna M. Deuser, the question was put and carried by an overwhelming majority, and again came loud applause. The meeting adjourned at 11 o'clock. . . . (Pages 197-8-9.)

The Pacific Coast Journal of Nursing, May, 1913. The Eight Hour Law. ANNA C. JAMIE.

The result of the contest over the amendment to the eight hour law by which pupil nurses will be included is as yet not decided. Forces on each side are actively preparing, and in a few days we will know the outcome. To those interested in hospitals financially and those directly connected with the administration, this outcome is important. The call of the pupil nurse for protection has gone out. As a citizen of the state, in many instances as a voter, she sought the law as many others are doing here to-day, and the makers of the law heard. . . .

We shall be very closely watched by our sister states

to see what the outcome will be. This is not only a state but a national and an international affair of interest. There is at the present time, I am told, no law regulating the hours of duty of the pupil nurse except in Australia. We, then, in California, are about to establish a precedent. . . . (Page 217.)

Ibid. Letters in re the Eight Hour Law—San Francisco Mass Meeting. L. BINGHAM.

I was one of the many called to attend a mass meeting of nurses and pupils in training at Lane Hall, in order to freely discuss the senate and assembly bills extending the provision of the eight hour day and the forty-eight hour week law to the nursing profession.

This discussion was interesting. Some of the views expressed showed thought and study of the subject, and went into detail of the existing laws, while other speakers barely knew what the laws implied, but gave their ideas simply because they thought the law right. Others, again, were indignant because it came under union labor, therefore were of the opinion the nursing profession would be classed as under the servile law. I listened to all, but nothing seemed to appeal at all to anything that was tangible or positive until one little nurse arose to the occasion. She seemed to sweep all doubting objections aside. She dealt with real things. She spoke of the pioneer work of the nurse against all sorts of opposition, of nights and days of weary work, of heartfelt sorrows, and the long, weary hours. In place of discussing under what head we should have the eight hour law extended to us, she said we should be grateful for it from whatever source it came, and receive it with humility. . . . (Page 220.)

The Pacific Coast Journal of Nursing, June, 1913. Editorial Comment.

The report of the C. S. N. A. legislative chairman, Anna C. Jammé, on the public hearing of the eight-hour

measure, appears on page 275. The "father" of the measure in both senate and assembly had received many letters for and against, including hospitals in the list for shorter hours. The chairman of the joint committee of senate and assembly had also received communications and these were the only letters made public at the hearing. The pupils in many of the training schools were approached by the heads of the schools or by physicians on the boards and asked to sign their names to petitions *against* extending this measure to hospitals. Later it appeared many had signed unwillingly and in fear of being discriminated against. Others had frankly refused to sign. . . . (Pages 242-3.)

The American Journal of Nursing, August, 1914.

The California State Nurses' Association held its eleventh annual convention in Sacramento, May 25-27, with a good attendance from all parts of the state. . . . . . The Association went on record as approving a maximum schedule of fifty-six hours a week, eight hours a day, for pupil nurses. . . . (Page 1026.)

Twentieth Annual Convention of the National League of Nursing Education. St. Louis, Mo., April 23 to April 29, 1914. The Eight-Hour Law as Applied to Student Nurses. Miss Lila Pickhardt. *Pasadena Hospital Association, Pasadena.*

Recent Legislation Governing Hours of Duty of Pupil Nurses in Hospitals.

. . . Before the bill was passed newspapers commented very freely upon it and hospitals and nurses were much in the limelight. . . . (Page 109.)

3. The General Condemnation of the Practice of Many Hospitals in Employing Pupil Nurses Instead of Graduate Nurses, for the Sake of Financial Gain.

Authorities agree in condemning the system whereby in many hospitals the pupil nurse is employed primarily for financial gain for the institution. In many hospitals the pupil nurse while still in training, is employed as a "special" for whom the patient pays the hospital at the high rate set for graduate nurses. In other places she is employed instead of the well-paid graduate in administrative or supervisory positions. Such pupil nurses are subject to the double strain of long working hours with consequent heavy responsibilities, and the strain of continuing with their student duties. By fixing an 8-hour day for pupil nurses and exempting graduate nurses from the scope of the act, the California law protects the exploited pupil nurse and leaves free the graduate nurse to perform the continuous duties of supervision and operating room which cannot be interrupted without danger.

The Modern Hospital. St. Louis, Mo., September, 1914. California and the Eight-Hour Law. Anne A. Williamson, *R. N., Superintendent of Nurses, California Hospital, Los Angeles, Cal.*

Perhaps the description of the passage of the bill by the Senate can best be given by quoting from a San Francisco newspaper.

> Senator Henry Lyon, who fathered and championed Senate bill 466, reviewed the situation in the hospitals in the state, pointing out the long hours

of labor required of pupil nurses, the money earned by them for their institutions, and the pittance barely large enough to cover the cost of uniforms and books paid to them. He urged the speedy passage of the bill, but was blocked at the outset by an amendment which was offered exempting hospitals from the operation of the law. From that time the fight centered on the amendment.

This spirited introduction was followed by one of the northern senators, who read several letters from prominent people, which were declared to prove conclusively that if there is any class of young women engaged in any vocation who need the protection of the eight-hour law, it is the pupil nurse. He based his assertion on the requirements of health, education, public safety, and humanitarianism, and wound up by asking if California, which leads the vanguard in humanitarian legislation, should deny to the pupil nurses the privileges they accord to other women. **(Page 184.)**

Tenth Annual Meeting New York State Nurses Association. Albany, N. Y., October, 1911. "The Nurse Practice Act and its Administration." DR. AUGUSTUS S. DOWNING, *M. A., LL. D.*

. . . Hospitals as a rule do not want the training school primarily for the purpose of training nurses but primarily that they may have the patients in the hospitals nursed at a minimum cost. The whole trouble with the administration of the Nurses' Practice Act, the root of the evil—if evil may be found—is in what we may safely call the commercialization of nurse training schools. The hospital thinks first of its own financial interest and after that of the training of the efficient nurse. As the public has become educated in the care of the sick there has been an ever increasing patronage of hospital service. (P. 80.)

. . . They make no claim that this girl can be trained to the highest efficiency, but because the great

number of patients in the hospital must have some kind of care, not the best care but some kind of care, and because the funds available for the maintenance of the hospital have not been provided with a view to furnishing a sufficient number of trained, expert, paid nurses. Some hospitals, even in estimating the cost of maintenance and the resources with which to meet this cost, figure on the revenue which will come through the use of nurses in training upon special cases. One hospital in this State had a revenue of over $4,500 last year from this service. Another hospital had a revenue of $6,000 from this service. . . . (Page 82.)

. . . I have studied during the past three years the question of nurse training schools—I have had to study it whether I wanted to or not because it has been forced upon me day after day, problem after problem. It seems to me that the whole process of nurse training has been organized in a reverse order from what it should have been. The nurse training school is an adjunct only to a hospital. It is not a co-ordinate branch of the institution as it should be, but is an adjunct. The hospital has had to have the training school, as I have said, not for training nurses but to nurse the patients. It was the only way they could get nurses because in the organization of the hospital they had not provided sufficient funds to take care of the patients as they should come and they have been coming more and more and more every year. That is not the way we train physicians. That is not the way we train dentists. That is not the way we train lawyers. That is not the way we train optometrists, those persons who deal with the refractions of the eye. We go directly to the education of the individual for a specific purpose and that is the most important and only purpose during his training. That is not the way but should be in nurse training. . . . (Page 83.)

Bear that in mind, please. That as these hospital nurse training schools graduate their pupils unfitted to serve the public they are robbing the public of the very service for which hospitals were originally established, viz: to take care of the sick better than they can be

taken care of at home. So the inefficient nurse that comes from a nurse training school, if she come not up for examination or if she does come up and by accident or good fortune passes the examination, but is an unfit, untrained nurse, an uneducated nurse, is taking from the public something which the public has a right to demand. . . . (Pages 84-85.)

New York State Education Department. Report on Higher Education in the State of New York for the school year ending July 31, 1911.

. . . On the one hand, social economists, sanitarians and educators are turning to the nursing profession to supply women trained not only in the nursing of disease, but in the conservation of health. On the other hand, the hospitals, ever increasing in number, which have come to depend upon the training school, not for expert service but service at a minimum cost to the institution, are appreciably lowering the educational standard of those entering the nursing profession. By their indifference to the pedagogical side which would offer some attraction to the student mind, by their requirements of long hours on hospital service which debar the pupil from any home or social life, and duties which can in no wise be construed as experience in the care of the sick, are turning from a profession that from the stand point of its social value and varied and interesting fields of work, should command the highest type of mind, the thousands of self-supporting young women who are yearly graduating from our high and normal schools and colleges. . . . (Page 279.)

. . . It has been contended that for no other profession or remunerative occupation can the preparation be obtained at so small a monetary expenditure on the part of the student; and statistics have been recently submitted to show that indeed certain of the institutions provide this education at no inconsiderable cost to themselves—the conclusions as to the costs, namely $1,200 per pupil for the three-year course, being based on a study of

several schools offering to their students educational advantages distinctly above the average. . . . (Page 280.) From the standpoint of the institution, a comparison of the output for the student nurse and the cost of a graduate nurse staff (and the equivalent could be obtained in no other way) is pertinent. A low estimate of the cost of maintenance would be $5 a week, and the lowest salary at which such service could be obtained would be $35 a month (in New York City the salary for the graduate nurse to-day is uniformly $50 a month), making the cost to the institution for the graduate nurse for the three years $2,018 as against $1,200 for the student nurse, and this is too low an estimate for it has been repeatedly proven that a graduate nurse staff increases rather than diminishes the numbers needed since such a staff would naturally not submit to the long hours and arduous duties.

But the student nurse in many institutions is a still further factor in reducing the expense. Of the registered hospitals in New York State, 102 report that the students are placed on special cases in the institution, the patients paying the institution for such service from $2 to $3 a day; and while it is true that this is a desirable experience, it is very doubtful whether such experience can compensate for the loss in classwork and the interference in obtaining experience in the required services. Many of the institutions do not enter as a separate item in their financial statements the income received from the student nurses' services. Of the 56 who make this a separate entry, 31 report receipts of over $500, the largest amount in a registered school last year being $6,894. One comparatively small institution not registered reported $8,994.

That institutions contending that they are unable, owing to a shortage in the student nurse force, to meet the educational requirement of the law or to affiliate for the services in which they are deficient, are able to command no inconsiderable sum toward the support of the hospital from the student nurse, lays them open to severe criticism.

One institution with a daily average of less than 50

patients has not found it possible to affiliate for experience in the diseases of infants and children, a service in which they were deficient, yet the income from the student nurses' services this past year was $6,782, and that with a student force of only 14. The saving to this institution from its nursing force amounted to $52,688 in the three years, as against an expenditure of $16,800. In the large institutions in New York City whose equipment, preliminary preparation, educational standards and comprehensive service entitle them to the name of schools, this custom of specializing with the student nurse has been abolished for many years. (Page 281.)

United States Bureau of Education. Bulletin, 1912, No. 7. Educational Status of Nursing. M. ADELAIDE NUTTING. *Director Department of Nursing and Health, Teachers College, Columbia University, New York, late Superintendent of Nurses and Principal of Training School, Johns Hopkins Hospital, Baltimore, Md.*

In the majority of schools the student's services to the hospital are directly recognized by the payment of a small sum of money monthly, stated to cover expenses of uniforms and textbooks, but ordinarily more than double the amount needed for these purposes. It is estimated that expenses for uniforms and textbooks do not usually exceed $50 per student annually, while the sum of money provided students for this purpose is seldom less than $84 per annum, and it frequently goes as high as $120 per annum. Formerly these money payments were higher, ranging from $120 to $180 annually, and were not infrequently referred to in the announcements as wages. But of late years the amount has been gradually lessened, until $8 a month appears to be the sum given in the larger number of schools. (Page 16.)

Utilizing Students.

Not only is all the general nursing in these hospitals done through the services of the students, but in certain

instances the students themselves become an actual source of direct and considerable profit to the institution. This happens when the student enters such a private hospital for two or three years and is placed at a very early stage of her work upon special duty with a single patient, a considerable fee being charged for her services. In some instances it is said that pupils are kept at such special individual work during the greater portion of the course of their so-called training, the fees for their services going directly to the management.

But this does not exhaust the methods by which hospitals can utilize for their own profits the services of their students.

Out of the entire 692 hospitals from which statistics were recently received, 248 were found sending out their pupils into families in the community for private nursing, for periods ranging from 2 to 26 weeks, the payment for this service in almost all instances going directly to the hospital. It was difficult to secure explicit information as to the amount of time which student nurses really are devoting to outside work of this nature. Fifty-nine hospitals stated that they sent out their students, but omitted any reply to the question asking about the average amount of time in which the student was so occupied, using merely he vague but suggestive phrases "time varies," "as needed," or "subject to call."

It can be readily seen how the effort to guard the education of nurses by suitable legislation would interfere with such exploiting of the pupil nurse, and it is a well-known fact that the most persistent opponents of such legislation in the various states have been found among those representing such hospitals—those whose financial interests were involved in maintaining the *status quo*. (Pages 20-21.)

The Pacific Coast Journal of Nursing, May, 1913. Letters ***in re the Eight Hour Law.*** *From Washington.*

. . . So long as we have a system that works nurses for the profit there is in their labor—call it train-

ing them—and allows the institutions to work them for an unreasonable number of hours, just so long will our standard fail to climb to the height we are all looking for it to reach. The subject is really inexhaustible. There can never be too much voice against the present methods, especially in private institutions, where they are put on special cases at any time after getting their uniform, and many times kept for weeks and weeks during their period of training where the hospital gets graduate prices for their services and pays them the magnificent sum of $. per month. The hospitals that are using the eight hour system are paying the best interest on their investments. . . . One doctor at Olympia who was fighting to keep up the standard for the medical profession admitted that he owned a hospital of twelve beds and had a training school! That, of course, is only cheating some poor, ignorant girls who do his work, let him collect for what they have done, and then as a reward of merit they are given a diploma and turned out to compete with well-trained nurses. Think what a farce! This trouble is due to our state granting a charter to such an institution. Yes, we must legislate against all th.. It is the only way to get at the root of it. Make laws, and right ones, that the people must live up to, and we will soon see good results for everybody interested in hospitals and training schools. Respectfully, Agnes R. Fletcher, R.N., Superintendent City Hospital, Tacoma, Wash. (Pages 219-20.)

The Pacific Coast Journal of Nursing, June, 1913. Editorial Comment.

. . . In a number of the schools physicians and superintendents addressed the pupils, and also received others to address them—financially interested in training schools—on the unethical and unprofessional aspect of having a fixed law governing hours of work in the schools, thereby of necessity(?) classing pupils and nurses with labor unions. The heads of these institu-

tions apparently failed to appreciate their own attitude of coercion analogous to that of the money overlord.

One board went so far as to summarily dismiss a graduate member of its staff—one of the most esteemed and valued members of the San Francisco County Nurses' Association—on account of comment by this member at the San Francisco County Association mass meeting. When speaking in favor of the eight-hour law, this member stated that a superintendent had told her that very morning that when her pupils failed to earn $1,000 a month for the hospital her board wished to know the reason. It so happened that it was a superintendent outside of San Francisco, but members of the hospital board in question were not to be appeased, so this very efficient and valued member of their staff was dropped. . . . (Page 243.)

The Pacific Coast Journal of Nursing, April, 1913. Reasons Why the Eight Hour Law Should Apply to Hospitals, by Mrs. Annette Allison.

. . . It is no argument to say that other professional people work many hours overtime and do not complain. That is their own pleasure. They are not compelled to do so. As to drawing a comparison between university students and student nurses, suffice it to say that if the state university depended for its maintenance upon the work of the student body the hours of labor and study would be speedily regulated by the state law. . . . Given an eight hour law, there is time sufficient for the difficult studies, the lectures, and examinations, of which the average patient knows and cares nothing, and the managers of hospitals have forgotten. *Are nurses in training not wage earners? Then what shall we style the good round dollars they earn for the institutions?* Does not the apprentice come under the law? . . . (Pages 152-153.)

Twentieth Annual Convention of the National League of Nursing Education. St. Louis, Mo., April 23 to April 29, 1914. Hospital Trustees and the Training School. M. ADELAIDE NUTTING, *Department of Nursing and Health, Teachers College, Columbia University.*

The hospital has taken over the education of nurses as its function and its right. . . . It controls virtually the whole system through which over 30,000 women are to-day being prepared for a profession of growing importance to society. To fail to understand this is not really intelligent, and certainly few men would expect to succeed in the conduct of their business if they did not look farther into the future than do the trustees who permit the training school to be looked upon merely as a "maid of all work" to the hospital. . . .

. . . Clear thinking on this particular subject is difficult, because the training school on its present basis is of such considerable financial value to the hospital. It always saves expense, it often, in addition, is made to produce revenue. To free it, to place it where it belongs would mean expense. It would mean at the very outset the provision of paid service for a certain, in some hospitals, a considerable proportion of the miscellaneous routine work now done by pupil nurses and miscalled education in nursing. . . . (Pages 88-89.)

Ibid. The Eight-Hour Law as Applied to Student Nurses. MISS LILA PICKHARDT, *Pasadena Hospital, Association, Pasadena.*

Recent Legislation Governing Hours of Duty of Pupil Nurses in Hospitals.

A disposition to make the law appear vicious, and detrimental to the good of all concerned, rather than to conform with it, or at least to live up to the spirit of the law, and make good and hope for leniency at the next legislature, has been noticeable. The greatest loss to the hospitals no doubt was the income from pupil nurses

on special duty. Just how great this revenue was may be estimated when we have reason to believe that in some institutions 40 per cent. of the nurses were on special cases. Frequently probationers were assigned to special duty and some nurses have estimated that two-thirds of the time, while enrolled as student nurses, was given to special duty. . . . (Page 110.)

The American Journal of Nursing, June, 1913.

The bill introduced into the California legislature early in the season, limiting the hours of labor for women in that state to eight in a day, or forty-eight in a week, and which has given rise to much controversy, has become a law. It applies to women employed in manufacturing and mercantile establishments, and includes pupil nurses in hospitals, but excludes graduate nurses.

We understand that this bill has been vigorously opposed by hospital authorities, and that superintendents of training schools are greatly concerned. To secure pupils enough for three complete shifts, and to so arrange the hours that no pupil shall work more than forty-eight hours in a week, means an added burden and expense, and will increase the difficulties of administration. It remains to be seen what the effect of this law will be, whether private institutions maintaining training schools will have to go out of business, or whether they will employ graduates whose hours of duty are not restricted, whether the limiting the hours of duty to forty-eight a week will increase the number of applicants to training schools. . . .

It is quite impossible at this distance to judge all of the conditions that have given rise to this law, which seems a drastic one. We believe, however, that the time has come when some limitation should be placed upon those hospitals who use their pupils for commercial gain without making systematic and adequate return in the way of nursing education. (Pages 661-662.)

4. The Common Practice in the Best Hospitals Throughout the United States of Sharply Differentiating Between Graduate and Pupil Nurses as to Capacities, Functions and Duties.

Graduate nurses are employed within the hospital in administrative or supervisory positions or as "specials" for private patients. They are paid a regular salary. Their field of activity, however, is not limited to the hospital. Except in rare instances, the graduate nurse's term of service within the hospital is comparatively short. She can at any time terminate it.

The position of the pupil nurse is well known to be totally different. She is paid a small stipend, usually enough to cover cost of uniforms and text-books. She is regularly employed in the care of the sick under close direction and strictest discipline. She is subject to rules and regulations from which the graduate nurse is exempt. In addition she is required to have and prepare for a certain number of hours in theoretical instruction.

Not until the last months of her last year of work does the pupil nurse enter upon some of the duties of the graduate nurse, and then only under the careful supervision of the graduate.

In some hospital training schools the pupil nurses are bound by contract to remain during the two or three prescribed years of training. In all hospitals the obtaining of their diplomas, upon which depends their future careers, is conditional upon their completing the prescribed years of training.

Unlike graduate nurses, pupil nurses are apt to be

discredited if they leave the hospital before the term of training is complete, and may be unable to secure employment in another hospital.

"In order to become such graduate nurses, it is essential that each of said females pursue a course of study to fit her therefor, and at the same time acquire practical experience in the care and nursing of the sick and injured.

. . . Said course of study so required to be pursued by said females occupies a period of at least three years, and in order to acquire at the same time said practical experience, said student nurses attach themselves to and pursue said course of study in hospitals.

. . . Said course of study and training requires said student nurses to attend lectures delivered at various times in the hospitals to which they are so attached, and in addition thereto to devote a large number of hours each week in the study of subjects relating to the profession of a graduate nurse.

. . . Said student nurses are also required in said hospitals to keep in order and clean the rooms occupied by them, to make their own beds, and to take care of a number of other rooms located in such hospital, of which she has charge.

Said student nurses are also required to assist in the preparation and to bring to the patients confined in such hospital, their food, and to assist in caring for such patients. In addition thereto said student nurses are required in some of said hospitals to remain on duty visiting the rooms and wards in which patients confined in said hospitals are located, and assisting in the care of such persons from ten to fourteen hours each day. . . . Unless the actual hours of duty of said student nurses are restricted to eight hours per day and to forty-eight hours per week, so that student nurses cannot be compelled to work for more than said eight hours per day and forty-eight hours per week, the health of said student nurses as a class will be undermined and endangered."

Bosley, *et al. v.* McLaughlin, *et al.*, No. 363: Answer of Defendants, Record, page 18.

The Modern Hospital, St. Louis, Mo., September, 1914. California and the Eight-Hour Law by ANNE A. WILLIAMSON, R. N., *Superintendent of Nurses, California Hospital, Los Angeles, Cal.*

The bill, as originally drawn, included all nurses, but it was argued that the graduate nurse had the same status as a physician, and that to put her under the law would be both a hardship and an injustice. (Page 183.)

United States Bureau of Education Bulletin, 1912, No. 7. Educational Status of Nursing. M. ADELAIDE NUTTING, *Director Department of Nursing and Health, Teachers' College, Columbia University, New York, late Superintendent of Nurses and Principal of Training School, Johns Hopkins Hospital, Baltimore, Md.*

It should constantly be borne in mind, in discussing the education of nurses, that training schools throughout this country are established as integral parts of hospitals and are conducted in all their functions under the control and general directions of hospital authorities. Recent statistics from nearly 700 training schools show that not more than 6 of them were established on any other basis than this, and that the hospital and the school are, as one response to the question on this subject stated, "all one." All schools are therefore in one sense proprietary. . . . (Page 14.)

In order that the full value of the school to the hospital may be more clearly understood, it should be explained that an actual nursing staff for the hospital is created by the establishment in it of a school of nursing, and, through the organization of its student body into a corps of workers of various grades—probationer, junior, senior—adjusted to the varying needs of the hospital. The hospital itself becomes the school, and the actual daily and nightly routine of work in its wards and other departments stands for a system of education. The supervision which would ordinarily be required for the

proper conduct of the work becomes a form of instruction; the supervisors or head nurses are, as a rule, the instructors; the superintendent of nurses is also the principal of the training school. The entire burden, in fact, of the actual care of the sick and of their immediate surroundings rests upon the students of the school; and in many hospitals, particularly those of moderate size, the students are also filling executive official positions as head nurses, assistants, night supervisors. (Pages 15-16.)

The general plan of work in all training schools has the merit of extreme simplicity. The accepted candidates are admitted at certain periods of the year in numbers in accordance with the needs of the hospital. . . . It has been the universal custom to place these students, called "probationers," on duty in the hospital wards immediately on arrival, to confine them for the first few days to the simpler tasks in caring for the surroundings of patients, and to advance them shortly to minor duties in the actual care of patients. A certain proportion of these students thus on probation fail to pass the required tests, and retire or are dropped. The successful ones are placed in uniform, becoming the junior students on the staff, and from this point on they are pushed forward with considerable rapidity into the more difficult and important tasks and into increasing responsibility. It is naturally essential that they should be ready to render efficient service to the hospital at the earliest possible date. Some idea of the rapidity with which this process of development goes on may be gathered from the fact that it is customary to place this young student on night duty (*i. e.*, the sole charge of a ward of patients) at a comparatively early stage of her training, and it is expected that those who have been training her will have prepared her for this stage of her work, which may come at any time after the fourth month. Formerly it was a common custom to place student nurses on night duty at the end of the third and sometimes even of the second month. There has been great improvement in this matter of recent years, and now many of the better type of

schools postpone this trying experience until the sixth month or later. (Pages 34-35.)

Hospitals, generally, could and should begin to accept the idea that a considerable proportion of actual nursing work must be paid for. Such official, executive positions as those of head nurse, supervisor (for day or night), and assistant should be filled not with students, but with graduate nurses carefully selected because of their fitness for the posts they are to occupy. They should be paid a proper salary, and provision should be made in certain institutions in America, as has long been done in England, for an additional salaried body known as staff nurses. . . . (Pages 28-29.)

Transactions of the American Hospital Association Thirteenth Annual Conference. New York City, September, 1911.

Round Table Conference for Superintendents of Small Hospitals.

No. 2.—(a) Which is preferable, a graduate head nurse or a third year pupil nurse in charge?

Miss Ayres. In my experience with the graduate and pupil head nurses would consider from the hospital standpoint but two advantages in having pupil head nurses. First, one of economy, that in saving the salary of the graduate. . . . The graduate head nurse has more authority with the pupil assistant in her ward, with the house staff, and the visiting staff appreciate the permanent head who knows the routine methods. The graduate head nurse can give her entire attention to her ward classes, lecturer and examination are not absorbing her off duty time. She can devote more time to rest and recreation. Undoubtedly the graduate has better judgment in the ordinary and use of hospital supplies than the average pupil head nurse. Hence the question of doubtful economy for the hospital. I think the third year pupil, if selected from the more promising members of the class, can be made to take the responsibility with plenty of aid and counsel from the officers of the school,

but I shall always feel that the pupil derives more benefit from the system than the hospital. . . . (Pages 398-399.)

Proceedings of the Seventeenth Annual Convention of The American Society of Superintendents of Training Schools for Nurses. Boston, May, 1911. Report of Chairman of Committee on Pupil Head Nurses versus Graduate Nurses.

In reply to a large number of letters sent to hospitals large and small all over the country asking superintendents of training schools what the result was of graduate head nurses versus pupil head nurses, there was an almost unanimous opinion that in large hospitals the graduate and therefore more permanent head nurse was, from the hospital point of view at least, essential. Those hospitals unable to afford graduat e head nurses regretted it.

At least half of the smaller hospitals preferred the pupil head nurses, arguing that in the small hospital—under seventy-five bed capacity—the superintendent could keep a close watch over the work and that the pupils derived a valuable experience that in the three-year course was due them.

Three of the large eastern hospitals employ graduates as head nurses in the majority of their wards, reserving few of the less responsible wards for pupil head nurses in order to test the executive ability of their seniors. In these hospitals either an assistant superintendent or supervisors, who are well paid experienced graduates, practically live in the wards, directing and teaching.

From the substance of this information and from personal experience I do not hesitate to say that graduate nurses, well chosen, who will stay at least a year, are the most satisfactory heads of wards from every point of view.

I am equally certain that a few wards should be re-

served for pupil head nurses under competent and sufficient supervision. (Page 176.)

The supervisors who direct the pupil head nurses and assist in the teaching, who plan the affairs of three or four wards are in turn getting excellent experience for larger responsibilities as heads of training schools. (Page 177.)

Proceedings of the Eighteenth Annual Convention of the American Society of Superintendents of Training Schools for Nurses, Chicago, Illinois, June 3-5, 1912. For What Proportion of Nursing Service Rendered It Should the Hospital Pay? Miss Riddle.

When we consider the proportion of nursing service in a hospital that should be paid for in current coin of the realm—we may begin with the superintendent of the school and all her immediate assistants, the night supervisor, the head operating room nurse, and the head nurses in those departments where frequent changes might work disaster to the patients or to the instruction of the nurses who serve there. If a place in the superintendent's immediate force can be kept for a third-year pupil who has distinguished herself by good work along all lines, it will be found to be a tremendous incentive for the pupils and engender sufficient wholesome competition among them to react most favorable upon the routine nursing work and class work, besides being one way of increasing her opportunities. The same is true of the assistant to the night supervisor. We know a paid night supervisor who has an assistant largely for the sake of giving experience to a third-year pupil. Because she can be relieved of some work that would naturally fall to her this night supervisor is able to assume other important duties while supervising through her assistant. . . . (Page 164.) All authorities agree that the assignment of the nurse to any duty which robs her of her pay, in opportunities to acquire proficiency in her chosen profession, is a breach of contract and in the business work would be

considered a grave misdemeanor, if not a just cause for legal proceedings. Whereas, if the nurse were the offender, she would be dismissed from the school in a manner that would disqualify her for admission to any other.

Criticisms are made against sending the pupil nurse out to private duty for just this same reason, viz., that when she is so engaged without supervision the chances are that she is losing opportunities, or, if she is learning, she is learning the wrong thing or the wrong method. (Pages 166-167.)

Discussion by Clara D. Noyes.

The custom of placing pupils in charge of wards in large, richly-endowed, semi-private hospitals suggests a spirit of commercialism which is to be deplored from the educational as well as ethical standpoint. In the large municipal hospital the entire burden of nursing the sick poor should never be placed upon the shoulders of a pupil staff. They should struggle to secure in addition to a general supervisory force, graduate head nurses and heads of special departments, and on special services such as tuberculosis, alcoholic, and venereal, the entire staff should be a graduate one. Wards for the insane should be largely covered in the same manner.

I am also convinced that such services should be covered by a graduate night staff.

If such a staff is employed proper provision should be made for systematic relief. Rotation is also recommended as a means of preventing discouragement and over-fatigue from continuous night work.

I don't think we have begun to exhaust our resources for providing supplementary aid to our pupil nurse staff. . . . (Page 170.)

The Pacific Coast Journal of Nursing, June, 1913. Editorial Comment.

. . . For the benefit of those who have labored under the impression that *twenty-four hour* duty is essen-

tial to properly *train* a pupil in private duty, we took the trouble to write to the heads of a number of the large and best training schools in our country. Please bear in mind that some of the very best teachers as well as the best *private duty* and public health nurses come to us from the schools quoted. These schools, however, are run more on the order of *teaching institutions*, and not dividend paying. The following question was submitted:

> Are the student nurses assigned to private duty —that is, within the hospital—during their first year? Length of time? During their second year? Length of time? What is the average time of private duty during the third year? . . .

The Illinois Training School, Chicago, does the nursing in Cook County Hospital, where only the poor are admitted, and pupils are not assigned to private duty in its wards. Mrs. E. M. Simpson, superintendent, stated:

> Occasionally, with critically ill patients, when recovery depends on special care, the school at its discretion assigns nurses for this work. Invariably the most skilled pupil is appointed to this service. *Illinois has a ten-hour labor law for women which applies to nurses in training, and we make every effort to conform strictly.* . . . No charge is, of course, made to patients or their friends for the service of a pupil special. Pupils from this school are sent to private hospitals for their private duty training during their *third year.* This covers from *one month to six weeks.* During this time they are supposed to have at least *one* special case.

The Presbyterian Hospital, Chicago, Miss E. McMillan, superintendent, replied:

> Pupils are not assigned to private duty during first year; occasionally during second, amounting to one month, perhaps, but our pupils do *very little* special nursing. I believe it would not be more than *three months.* . . .

Massachusetts General Hospital, Boston, Sara C. Parsons, superintendent of training school, replied:

> . . . Usually when our patients need specials, we get graduates from outside to take care of them. It is possible that a pupil in her three years may have specialed for about a month altogether, for short periods at different times. Our pupils seldom get as much as a month's specializing in their whole course, and when we put a pupil on a case, it is usually from one to ten days. We always select a pupil who has had such experience as will make her suitable for the case she undertakes.

Newton Hospital, Miss M. M. Riddle in charge, replied:

> Student nurses are not assigned to private duty during their first year; rarely during second year—not more than two weeks. . . .

Episcopal Hospital, Philadelphia, Katherine Brown in charge, replied:

> Are sometimes assigned to private duty for a day or two in first year; during second year for not more than one week. Not assigned to private duty during third year. Do not remain with patient during twenty-four hours when on private duty. No charge is made to patient for student care. *Do not put pupil nurses* on as *specials* for *pay patients.* Pupils do very little special work, and that only for desperately ill patients who can not pay.

Bellevue and Allied Hospitals, New York, Clara D. Noyes in charge, replied "No" to each question, with explanation as follows:

> Bellevue is a municipal hospital; no beds for private patients. However, there is always a demand for specials for very ill patients, but *we always employ graduates.* A special appropriation is made

yearly for this purpose. In that case two nurses cover the twenty-four hours, they being on twelve-hour duty each.

Presbyterian Hospital School of Nursing, New York, Anna C. Maxwell in charge, replied "No" to first and second year on private duty, and three months on such duty in third year. . . .

The superintendent of Johns Hopkins Training School replied:

> Pupils have no private duty during first year. Very rarely in second year—a few days. No student has over one month in third year, and not all have that. . . .

The Superintendent of Ferrard Training School, Harper Hospital, Detroit, replied:

> No private duty in first and second year. One month in third year. . . . (Pages 243-4-5.)

Ninth Annual Meeting, New York State Nurses' Association, Rochester, N. Y., October 18-20, 1910.

Discussion.

Miss Goodrich: There are many very young girls coming into our schools—many only twenty-one years old—and it is not always possible to supervise them. . . . The idea is to teach them in the beginning, when they first enter the training school, how to discipline themselves. They are going into the most sacred relationship. All of us know the temptations, the tests, the wisdom we have to have in going into the house and institution. The first thing is to learn to obey orders. They, though the rule is hard and *the graduate nurse* and the superintendent do not come under it, they can decide whether they wish to remain in that school or go to some other school. They are bound to keep the rules they have intended to when they entered the school, and while they remain they must keep the rules. . . . (Page 24.)

5. Acknowledged Power of Associated Graduate Nurses to Improve Standards in Their Profession.

Graduate nurses, subject to long hours of work in supervisory or administrative positions within the hospital, are to a certain extent able to arrange their work so as to obtain some relief and rest after excessive exertions. The Alumnae associations of hospial training schools, banded together into county, state and national organizations, have proved powerful agencies in maintaining standards in their profession. Besides the local organizations of graduate nures, the meetings and published proceedings of such national bodies as the American Federation of Nurses and the National League for Nursing Education, offer valuable opportunities for discussion and publication regarding the status and conditions of graduate nurses.

Teachers' College Record. May, 1910. Published by the Columbia University Press, Columbia University, New York. The University Education of the Nurse. By Richard Olding Beard, *M. D., Professor of Physiology, University of Minnesota. (Read at the Annual Convention of the American Federation of Nurses, St. Paul, Minnesota, June 9, 1909.)*

. . . Undoubtedly, the most helpful influence toward the betterment of the profession of nursing and towards the elevation of the standards of education for the nurse, has come from the associations of graduate nurses themselves. Pending the time—and may it come soon—when their influence shall become sufficiently well

organized and well directed, and therefore sufficiently powerful, to establish a standard of minimal requirements for the training schools of the country, they have taken a very important step toward this end, in several States, in securing laws to regulate and control the practice of nursing, and they have thus acquired the opportunity to set certain standards of fitness, if not for the schools, at least for themselves. They have secured, in the enactment of these laws, a lever with which they cannot fail, in time, to lift the requirements of the schools, if that lever be well and wisely applied. With this evident purpose at present inspiring the graduate nurses of the country, and their associations, with high ideals for themselves and for their followers set before their eyes, the time would seem to be ripe for a movement looking to the determination of definite standards of education in the training schools at large. . . . (Page 34.)

United States Bureau of Education. Report of Commissioner of Education for 1906. Chapter VIII. The Education and Professional Position of Nurses. M. Adelaide Nutting.

. . . The question of a national association of nurses, which should reach and unite the great body of alumnae, had long been in the minds of the founders of the Society of Superintendents of Training Schools. . . .

. . . The first alumnae association of nurses in the United States was formed by the graduates of Bellevue Training School in 1889, and the next was that of the Illinois school in 1890. In a statistical report made of alumnae associations in 1895, there were found to be twenty-one such associations or clubs organized and in active operation, and ten in process of organization, all with the common object of serving the best interests of the profession, and all under very similar forms of government. Meetings, papers, discussions, and lectures were distinct features of all of these societies. The name adopted by the national body, therefore, was the Associated Alumnae of Trained Nurses of the United States,

and the first regular convention was held with delegates from the alumnae associations of twenty-one leading schools.

This was the beginning of organized work among graduate nurses (of whom many thousands are found in this country), with the definite object of furthering of the higher and better interests of the nursing profession, **especially in relation to education;** and this was to be done not only by helping to support and strengthen the good schools already in existence and to discourage and oppose those of inferior scope and ideals, but also by securing legislation for the better protection of professional and educational standards. . . .

For purposes of international organization the Society of Superintendents of Training Schools and the associated alumnae have affiliated to form the American **Federation of Nurses.** An international council of nurses already in existence provides the way for an ultimate federation of nurses of all nations. At the recent international congress of nurses held at Berlin, many important matters of common interest to nurses in every country were the subjects of papers and discussions, and it is held that this congress has done much to advance the newly awakened interest in the education of nurses in Germany. . . . (Pages 157-8.)

Tenth Annual Meeting New York State Nurses' Association. Albany, N. Y., October, 1911. "The Nurse Practice Act and Its Administration." By Dr. Augustus S. Downing, *M. A., LL. D.*

This is no very old professional calling recognized by the State when you realize that in 1903 only our Nurse Practice Act became operative and that New York was one of the four states that enacted such laws in that year, and now, after eight years, you have accomplished, through your concerted efforts, the result that in thirty-three states your profession is regulated by statute. Those of you who are discouraged may cheer up when you think of what has been accomplished in this regard

in so short a time, when for one hundred years this country was struggling with the question of medical practice in this state, the question of registering physicians, the question of licensing physicians—and your work goes hand in hand with theirs—in eight years you have done, it seems to me, a marvelous piece of constructive work. . . . (Page 78.)

Ibid. Miss McIsaac, *the Interstate Secretary of the American Nurses' Association.*

. . . I was asked to say something of the work of the Interstate Secretary, and while I can tell you what we have tried to do, I cannot tell you what we have accomplished, because it is too soon.

The Interstate Secretary was appointed for the purpose of trying to bring the nurses all over the country, from the local alumnae association up to our national association, to a realizing sense of what we might do if we were all banded together and all were working for a common end. . . . (Page 107.)

To look back over what our organizations have done for the working nurse in the last eighteen years, it is really marvelous, and instead of being discouraged, as a good many of us are, who believe we are never going to get any further, we should be mightily encouraged. . . . (Page 108.)

Perhaps the nurses will be interested in knowing where the Interstate Secretary has been asked to go. . . .

I go from here to New Jersey and Pennsylvania and Maryland and West Virginia and then to Wisconsin before going south to Kentucky and Tennessee, and in all of those states to many cities in the states, to Mississippi and Louisiana and Texas, and in Texas, I think, there are seven cities to which I am going. . . . Then after Christmas some work in the Middle West and then out to the Northwest and the Pacific Coast again. It ought to be a help to bring us closer. . . . (Page 115.)

The Pacific Coast Journal of Nursing, June, 1913. The Department of Nursing and Health at Teachers' College, Columbia University. By M. Adelaide Nutting (*Read at the Congress of Nursing in Cologne, held under the auspices of the International Council of Nurses, August, 1912. Reprinted from The Canadian Nurse*).

The department of nursing and health at Teachers' College, Columbia University, in the city of New York, shows the first attempt in history to provide higher instruction for nurses, beyond that offered by the ordinary hospital training school. . . .

It was part of the statesmanlike quality of Isabel Hampton Robb's mind that she did not think in terms of the individual but of the general. In looking at the nurse she saw always an army of nurses reaching far back into the past, stretching forward into the future, spreading and growing and presenting for the world's use either a strong, trained, and united body of workers, or a weak, undisciplined, straggling, and unserviceable body. . . . She saw hospitals and training schools multiplying in response to many kinds of calls and impulses, charitable and humane or purely mercenary, and she was constantly impressed with the great difficulty of maintaining good standards, or indeed any standard in training schools, under so many and such diverse forms of government and such fundamentally different conditions of life and work, and her question was, How can we establish definite and satisfactory standards of work which shall be attainable by all schools? . . . She appears to have become strongly impressed with the idea that a very considerable degree of uniformity in their education could be brought about through the superintendents of training schools. This thought she finally embodied in a paper. . . . The Society of Superintendents before which this paper was read was committed to the policy of "establishing and maintaining a universal standard of training in schools for nurses." Every important educational advance had been presented at its meetings, advocated and discussed there, and supported in its publications and re-

ports. It cordially endorsed and pledged material aid to the development of Mrs. Robb's plan, and in this instance, as well as in others, it furnished a useful demonstration of the enormous value of such an organization in initiating and supporting measures of educational and professional advance. . . . (Pages 249-250.)

Twentieth Annual Convention of the National League of Nursing Education, St. Louis, Mo., April 23 to April 29, 1914. Address of Miss Clara D. Noyes, *President of the National League of Nursing Education.*

We meet this year as the National League of Nursing Education, in conjunction with and as a definite part of the American Nurses' Association for the second time, but as a body of workers responsible for the education of women for the profession of nursing, we meet for our twentieth annual Convention. . . .

We are constantly called upon to safeguard and protect our schools and educational standards from those who cannot or will not see the importance of such. As the pupil is the unit in our profession and as all forms of nursing work are looking anxiously for the best prepared and ablest nurse, so it becomes the duty of our organization to stand shoulder to shoulder in our efforts to maintain our standards and work for higher ones, and thus preserve our solidarity. . . . (Pages 17-18.)

6. Reasonableness of the 8-Hour Day for Pupil Nurses.

Many authorities agree in the opinion that the 8-hour day is a reasonable period of work for the pupil nurse. The experience of those hospitals which have introduced the 8-hour day for pupil nurses shows that it is not only possible in theory but existing in practice.

The need of legislation is emphasized to secure the reduction of hours for pupil nurses, since voluntary action by the hospitals has been slow and the 8-hour system even when voluntarily established is often infringed.

A History of Nursing from the Earliest Times to the Present Day. Vol. IV. Edited and in Part Written by Lavinia L. Dock, R.N., *Secretary of the International Council of Nurses, Graduate of Bellevue Training School, New York City. Putnam, 1912. New Zealand.*

The hours for nurses' work throughout the Dominion are, compared with other countries, fairly easy. The eight hours' system has been established since 1898 in some of the hospitals, and by the Hospitals and Charitable Institutions Act in 1909 was made compulsory for all pupil nurses training in the larger hospitals. It originated with Dr. Kenny, Medical Superintendent of the Wellington Hospital, and organized by him on the lines of engineer hours on board ship. . . . (Page 219.) . . . The eight hours' system is not extended to the trained staff nurses and Sisters of the hospitals. . . . (Page 220.)

Teachers College Record, May, 1910. Published by the Columbia University Press, Columbia University, New York. The University Education of the Nurse, by Richard Olding Beard, M. D., *Professor of Physiology, University of Minnesota (Read at the Annual Convention of the American Federation of Nurses, St. Paul, Minnesota, June 9, 1909).*

. . . It is at this juncture, in the history of the profession of nursing, that the opportunity has come, in the State of Minnesota—an opportunity which many of us who have been deeply interested in that history have waited for and gladly welcome, to establish a training school for nurses in connection with the university hospital service, as an integral part of the University of Minnesota. . . . (Page 34.)

. . . The requirements of the Training School. . . . (Page 35.)

. . . *Fifth:* A limited hospital service and study period of eight hours a day will be assigned to each student during her entire course of training. (Page 36.)

Tenth Annual Meeting New York State Nurses' Association, Albany, N. Y., October, 1911. The Nurse Practice Act and Its Administration. By Dr. Augustus S. Downing, M.A., LL.D.

I am deeply interested in the nurse training school in the University of Minnesota. There it seems to me is a school organized on the right principles. They require for entrance graduation from at least a four years' high school course. They require a physical examination of every candidate for admission and unless they can stand the test the individual is rejected. Then they give the young woman four months of preliminary training before she is admitted to the hospital at all. . . . At the end of the preliminary training she is given a month of probation, . . . and after a month of probation the Superintendent of the Nurses' Training School and a Committee of the School determine whether that girl

shall be admitted or not. Then after that she has about two and a half years of training in addition. She is only permitted to work eight hours. That includes her theoretical training, her professional training in the nursing room and her work in the wards and she is never allowed to work alongside of the bed of a patient unless there is a trained nurse there to direct her.

It seems to me that Minnesota has started the problem of nurse training in the right direction, that is, going at it in a direct, straightforward way, and I believe that Minnesota will out-distance the other states in not a very long time in the question of training nurses as they come from her training schools connected with the University. . . . (Pages 83-84.)

Tenth Annual Meeting New York State Nurses' Association, Albany, N. Y., October, 1911. Report of the Delegate to the American Nurses' Association. Boston, June, 1911.

. . . We were urged to use our active efforts, and our influence with hospital and training school authorities, to establish the eight-hour system in our schools. This, again, is work particularly for alumnae associations to take up, each for its own school. . . . (Page 106.)

Proceedings of the Thirteenth Annual Convention of The American Society of Superintendents of Training Schools for Nurses. Philadelphia, May, 1907. The Physical Effect of the Three Years' Course. By M. HELENA MCMILLAN.

Discussion:

Mrs. Fournier: We have an 8-hour course in our hospital, as against 12-hour formerly; and invariably the nurses, who change from the 12 to the 8-hour system, speak in the highest terms of the 8-hour system as against the 12, with reference to their physical power and con-

dition. They claim that their brain is perfectly clear and they can study ever so much better. They speak in favor, on all occasions, of the 8-hour system. (Page 51.)

Proceedings of the Seventeenth Annual Convention of The American Society of Superintendents of Training Schools for Nurses. Boston, May, 1911.

Report of the Committee on Education.

The President. . . . I would like to ask some one who has the eight-hour system well under way in a training school to explain how it works; whether the nurses have their eight hours consecutively, or whether it is divided; how it impresses the nurses, and what effect it has upon the general health of the school. It will ask Sister Amy (Children's Hospital, Boston) to enlighten us, if she will kindly.

Sister Amy. We have had the eight-hour system at the Children's Hospital thirteen years. When we started it the pupils didn't like it. I dare say they don't like it now. They don't like leaving the patients, and they don't like to miss having whole afternoons and whole days off, as they have under the old system. But there is no question as to the advantages of the system. The pupils are able to study properly, they can go out every day, can go to church, and can live more normally in every way. We never have any classes in the evening.

The following schedule is usually followed in a ward of twenty, every nurse being there at seven o'clock:

7-1	4-6	
7-1	4:30-6:30	
7-11	2-6	
7-10	1-4	6:30-9
9-7		

We tried the consecutive hours for almost a year, but it didn't work. We found that the students didn't use the time for study. By breaking up the hours they use the time properly, and have the proper rest and recreation. The only department in which there are longer hours is in the operating room. (Pages 76-77.)

The Pacific Coast Journal of Nursing, April, 1913. Editorial Comment.

Excerpts from Letters Received.

I read your editorial with much interest. I think it is more than time to take up the matter of hours of duty for pupil nurses, but I should not like to see it regulated by law. An eight-hour day is not difficult to manage if superintendents of schools and boards of hospitals could be made to see it. The class of women, too, in schools would improve and, consequently, the class of work done. I should like to see this all threshed out in Sacramento. I think we are meeting a very vital situation, not only for our own state, but for the country. It is a great opportunity to declare our profession.

ANNA C. JAMMÉ,
Pasadena,
Late Supt. Mayo Bros.' Hospital,
Rochester, Minn.
(Page 151.)

The Pacific Coast Journal of Nursing, April, 1913. Editorial Comment.

Hours of Duty in 1911 and 1896.

. . . The idea dominant in the minds of the teachers of nursing when, early in the life of the National Society of Superintendents, they, as a representative body of teachers, voted to lengthen the course of training to three years, was at the same time to reduce the hours of duty, and eight hours was favored by that body. Miss Dock, in her "History of Nursing," volume 3, page 135, states:

> "Within the training schools the three-year course once started made rapid progress, the eight hours lagging far behind." . . . (Pages 49-50.)

The Pacific Coast Journal of Nursing, May, 1913. Letters in re the Eight-Hour Law, from Washington.

. . . We who are most interested in the eight-hour proposition from Pierce County were supporting the

measure with our strength and purses, and did all we could. It was not given a fair show. They tried to kill it in the committee room, but some of us were there with plenty of fight. They gave the committee a week to consider and investigate. I went down to hear the results and found only one dissenting vote, and that was from the chairman of the committee, who had given his promise to the Seattle delegation that he would vote against it. We could not get the bill out of committee, as it had fallen into the hands of its enemies, and they would not let the houses have a chance to vote on it. But it is not dead. We will keep trying, and it is coming just as certainly as anything. I can not see how any nurse who has had a rigid training can forget how tired she used to become. How can she keep from trying to better conditions for those who are going through the same trial? The article by Mrs. Annette Allison expresses my sentiments fully. The proposition of not having an eight-hour law and still ask for an eight-hour system is too ridiculous to argue. It is optional now, and what have we? . . . (Page 219.)

AGNES R. FLETCHER, R. N.,
Superintendent City Hospital, Tacoma, Wash.

The Pacific Coast Journal of Nursing, June, 1913.
Editorial Comment.

. . . According to our American Journal of Nursing, the Pennsylvania legislature has also a measure up to include pupil nurses in an eight-hour law. In regard to this question we feel we must incorporate here part of a letter from Professor M. Adelaide Nutting of the department of nursing and health, Teachers' College, Columbia University, New York, even though it appears in full in Miss Jamné's report on page 275:

> . . . I am solidly in favor of an eight-hour day and night, and if the philanthropists and others throughout our country are unwilling or unable to secure proper conditions of work for their pupils and other workers . . . it is my opinion it is time for labor to step in and control the matter. I see no

real loss of dignity in so doing; yet I know how you all feel, that in some way the dignity of our profession will be impaired and the status of nursing lowered, and I wish it were possible to secure righteous conditions for our workers in other ways. Experience covering half a century and over appears to show that this is difficult if not impossible of accomplishment.

This opinion, so frankly expressed by the head of a department of one of the highest standing teaching institutions of our country, should go far to calm the fears and soothe the would-be pride in the so-called ethical and professional status, at present assumed by some hospital heads at the expense of the welfare and health of the workers. It has been shown, too, that it is quite *possible* to educate efficient nurses for private duty of the highest order on ten and twelve hour schedule, and no doubt on an eight-hour schedule, since in many of our big and best schools there is *no* private duty. . . . (Pages 245-6.)

The Pacific Coast Journal of Nursing, June, 1913. Letters in re the Eight-Hour Law.

Chicago, May 7, 1913.

To the Editor: In regard to the eight-hour law, no right-minded person would, for a moment, question the justice of an eight-hour day for the pupil nurse; but to have the time the student may devote to learning her profession, regulated from outside, is most startling. . . . A young woman while working in a hospital to learn her profession is distinctly a student of a technical school. Though much has been done to improve the schools in the last few years there is still much to be done, and whether this act becomes a law or not, I repeat it is most regrettable that we have by our inaction, made it necessary for the disinterested outsider to arouse us to the realization of the need of humanitarian treatment of the pupil nurse.

To carry out successfully an eight-hour system in the school is not an impossibility, and having been brought face to face with the possibility of this system being made a law, superintendents will, no doubt, institute a means of making a shorter day for the nurse in training.

LYDA W. ANDERSON, R. N.
(Page 275.)

Twentieth Annual Convention of the National League of Nursing Education, St. Louis, Mo., April 23 to April 29, 1914. The Eight-Hour Law as Applied to Student Nurses. MISS LILA PICKHARDT, *Pasadena Hospital Association, Pasadena. Recent Legislation Governing Hours of Duty of Pupil Nurses in Hospitals.*

It is too early to present data at this time on the success or failure of the law. . . .

In some instances it appears that by condemning the law the superintendents have been condemning themselves as unwilling to demonstrate that an 8-hour schedule voluntarily arranged is the only just arrangement and that the alleged necessity for over time duty and consequent irregularity is not an inherent necessity. . . . (Page 109.)

The Modern Hospital. St. Louis, Mo., December, 1914.

Again the Eight-Hour Law.

The old-fashioned custom of considering the nurse a soldier had the advantage of giving the impression that, no matter what the exigency, hers "not to reason why," hers but to accomplish the task in hand, regardless of time and effort. While that is an extreme to be deplored to-day, it was a demand of the times that had to be met.

The eight-hour law in the hands of the unscrupulous or ignorant is a decided disadvantage, and might even be

a backward move on the march toward higher standards. On the other hand, it might prove a blessing in disguise and an impetus toward higher ideals.

An eight-hour law, as such, is no particular benefit to anyone, whether he be a labor unionist or professional worker, unless the additional time thus put at his disposal be well spent. . . .

The wise and thoughtful nurse will see in the plan an opportunity for improvement of herself and her condition, and to her it will be a benefit while in training. Just here one sees a necessity for a discriminating selection of pupils. It has long been known to superintendents of training schools that the well-bred and well-educated nurse has least to say about long hours and menial tasks —she recognizes nothing menial, and the hours are none too long for the accomplishment of what is required. With this spirit she is safe, and, with a spirit of this kind prevailing, any school is safe, and to it the eight-hour law may be a blessing. . . .

The conclusions to be drawn from the effects of this new law, and the evident desire for a pretty general practice of it, are:

1.—It makes necessary a more careful selection of pupils and the maintenance of even higher standards in the schools.

2.—The cultivation of a more truly professional spirit in the personnel of the schools. (Pages 398-399.)

United States Bureau of Education Bulletin, 1912, No. 7. Educational Status of Nursing. M. ADELAIDE NUTTING, *Director Department of Nursing and Health, Teachers College, Columbia University, New York, late Superintendent of Nurses and Principal of Training School, Johns Hopkins Hospital, Baltimore, Md.*

The following statistics are from reports received recently by the Bureau of Education, and presented with

them for comparison are statistics on the same subject in 1896:

Hours of Duty in 1911 and 1896.

Hours of Duty	Schools in 1911	Schools in 1896
8	69	2
8½	43	0
9	239	11
9½	26	29
10	220	14
10½	0	32
11	22	3
11½	0	14
12	44	3
More than 12	0	3
Hours not given	29	0
Total schools	[1]692	[2]111

(Page 30.)

How largely the superintendents of training schools feel the need of improvement in this direction may be gathered from the fact that over two-thirds of the replies to the questions on this subject suggested shorter hours as advisable or necessary, that a large proportion of these stated their firm belief in an 8-hour day. . . . (Pages 31-32.)

[1]Percentage under 10 hours in 1911, 54.6.
[2]Percentage under 10 hours in 1896, 37.8.

7. Reasonableness of Not Exempting "Experienced" Nurses from the Scope of the Act.

There is no legitimate basis for exempting so-called "experienced" nurses from the scope of the law. The "graduate" nurse is shown by her title to have had the benefit of a prescribed course of training. The term "experienced" nurse carries with it no recognized meaning or guarantee whatever. According to the United States Bureau of Education there were in the United States in 1910-11 1,048 hospital training schools for nurses.

> U. S. Bureau of Education, Bulletin 1912, No. 7, pp. 61-67.

Of the 1,028 hospital training schools reported in the United States in 1910-11, over 700 required three years of training before granting a diploma, about 150 required between two and three years of training, and about 150 required not less than two years of training. Of the 1,028 hospitals only seven gave a diploma after one or between one and two years of training, and of these, five were special maternity hospitals.

Of the 45 hospital training schools reported in 1910-11 in California, 36 require three years of training; 9 require two years of training. All but five require an educational qualification for entrance. All but six have an age limit for entrance as follows:

2	Hospitals	require	age	limit	of	22	yrs.
11	"	"	"	"	"	21	"
13	"	"	"	"	"	20	"
5	"	"	"	"	"	19	"
8	"	"	"	"	"	18	"

The graduate nurse is further differentiated from the so-called "experienced" nurse by the provisions of the California state law for the registration of graduate nurses. Under this law, originally enacted in 1905, amended and amplified in 1914 (C. 319), power is vested in the California State Board of Health to grant the title R. N. to any graduate nurse who, after a preliminary grammar school or equivalent education, shall have completed a three years' course in any hospital training school in the state.

Thus the graduate nurse is guaranteed to have had a minimum of preliminary education, a prescribed period of training and to have attained a minimum age. None of these qualifications are guaranteed for the "experienced" nurse.

The aim of the best hospital training schools and of the great nursing associations and societies is the creation of a profession with recognized standards. There are estimated to be nearly 100,000 graduate nurses in the United States; 30,000 pupil nurses are being trained in the hospitals. One of the chief dangers of the profession are the irresponsible persons calling themselves "nurses" or "experienced" nurses who have had no prescribed period of training, yet pass themselves off as properly trained and graduate nurses.

The foregoing extracts, showing the well-recognized differentiation of pupil and graduate nurses, have shown also the special functions, duties and capacities of the graduate nurse, none of which the so-called "experienced" nurse shares. The acknowledged power of the

associated graduate nurses to improve and maintain standards in their profession is further proof of the value of the training through which all graduate nurses must pass.

None of these considerations, which justify the exemption of the graduate nurse from the scope of the act, apply to the so-called "experienced" nurse.

8. Reasonableness of Including Pharmacists Within the Scope of the Act.

Pharmacists may reasonably be included within the scope of the act for the following reasons:

1.—Short hours of work are essential to preserve the worker from over-fatigue. One of the first faculties which suffers in fatigue is the faculty of attention. After fatigue has set in, attention is sustained only by marked effort of will, and gradually even such efforts are insufficient to counteract the growing effects of fatigue upon the faculty of attention. Inaccuracy and weakened attention necessarily follow.

2.—The work of a pharmacist requires the highest degree of exactness and of accuracy, that is, those qualities most dependent upon freshness of attention. The slightest errors or inaccuracies may obviously result in serious or fatal injury.

3.—The menace to the lives of patients from inaccurate compounders of drugs is well known and needs no emphasis. The recognized effect of fatigue in increasing

the dangers of inaccuracy is shown by the statutes of California and New York State which, as a protection to the public like the laws limiting the hours of labor of railroad employees, prohibit both male and female pharmacists from more than a specified number of hours of employment. A California act limits the hours of labor of pharmacists to ten hours in one day and 60 hours in one week. (Gen. Laws of 1906, Act No. 2665, as amended by C. 224, Acts of 1907; see also New York Consol. Laws of 1909, C. 45, as amended by C. 630, Acts of 1911.)

If the 8-hour day and 48-hour week is found a reasonable working period for women employed in factories, stores and the other occupations enumerated in the act, to preserve their health and working capacities, it is unquestionably a reasonable limitation of hours for women employed in hospitals as pharmacists. Their work requires the highest degree of attention and concentration; it is peculiarly dependent upon the workers freedom from fatigue and freshness of attention. The proposed limitation of hours is necessary not only to preserve the health and working capacity of the pharmacist herself, but to protect the lives of the patients dependent upon her accuracy and exactness.

4.—Good reasons have been shown to exist for exempting graduate nurses from the scope of the act. Their work in the hospital is of a totally different character from that of the pharmacist, the pupil nurses or the so-called "experienced" nurses. A recent report on the enactment of the California 8-hour law shows that it was at first proposed that graduate nurses also be included in

the original bill. But a realization that their status in the hospital more nearly approximates that of the internes and physicians, led to their exemption. Emergencies may arise when it is important or even essential that the graduate nurse, like the physician, be present.

The appellants in *Bosley, et al.* v. *McLaughlin*, No. 363 (Record, p. 20), have themselves admitted and confirmed this recognized status of the graduate nurses as approximating that of the physician, in their offer to introduce evidence proving among other things: "that graduate nurses working in and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers to assistants to the medical staff."

The work of the pharmacist, on the other hand, is not subject to emergencies. The processes of preparing and decanting drugs, making infusions and the like, may without injury be carried on by successive persons. This is shown by the practice in many hospitals of having this work done without employing a pharmacist. In such institutions the putting up of simple prescriptions, weighing and measuring of drugs, preparation of solutions, etc., are included among the duties of the internes, the graduate nurses or even of the pupil nurses. This work is performed by them in addition to their other duties, and need not be continuously carried on.

In cases of extraordinary emergency, it is merely a matter of good management to provide that stimulants or drugs should be within reach of some other responsible person beside the pharmacist, such as members of

the medical staff. Moreover, investigation would show that in such cases of emergency, the drugs or stimulants in demand do not need to be compounded at all, but in any well-conducted hospital, are available in the regular prepared form of proprietory drugs.

The graduate nurse is, like the physician, necessarily exempted from the scope of the act by the exigencies of her work. The pharmacist, upon whose freedom from fatigue and freshness of attention the lives of others are critically dependent, is legitimately included within the scope of the act, no exigencies of the work requiring her continuous presence and employment.

9.—Status of Ethel E. Nelson.

Furthermore, Ethel E. Nelson was not a pharmacist merely, but pharmacist and storekeeper. Clearly there was no arbitrary discrimination in including storekeepers within the prohibition of the act; as Ethel E. Nelson was employed also as storekeeper she was not injured by the alleged discrimination against graduate pharmacists and has no standing here to challenge the validity of the act on that ground.

Bosley *et al. v.* McLaughlin *et al.*, No. 262, Record, p. 5.

10.—The Act Does Not Apply to Women Internes Acting as Physicians and Surgeons.

Mr. Bowie in his brief says:

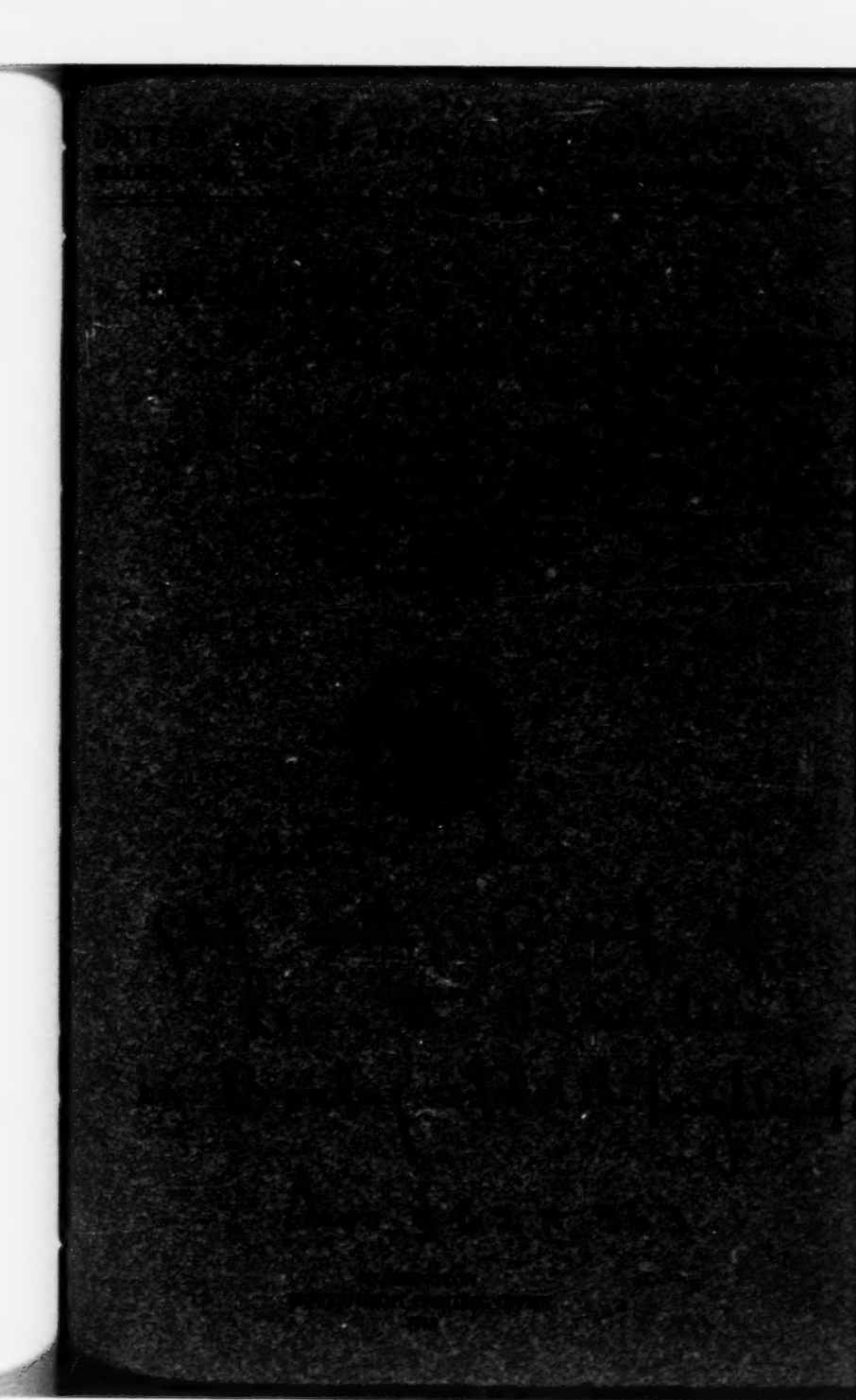
> "The act limits the liberty of physicians, surgeons" (p. 4). "No reason can be suggested . . . which sustains a law prohibiting the graduate physician . . . from working more than 8 hours a day" (pp. 5-6).

These statements appear to be wholly unfounded. Neither in California nor in Illinois have the acts limiting the hours of labor of women employees in hospitals been applied to physicians and surgeons, for they are not considered employees.

It will, of course, be noted that all claims of discrimination arising out of the application of the law to hospitals, relate only to the addition made to the statute by the act of 1913, c. 324, and can not in any event affect the constitutionality of the act of 1911.

LOUIS D. BRANDEIS,
Counsel for Sheriff and Labor Commissioner of the State of California, et al.

Assisted by
JOSEPHINE GOLDMARK,
Publication Secretary,
National Consumers' League.



UNITED STATES BUREAU OF EDUCATION
BULLETIN, 1912, NO. 7 - - - - - - - WHOLE NUMBER 475

EDUCATIONAL STATUS OF NURSING

By M. ADELAIDE NUTTING

DIRECTOR DEPARTMENT OF NURSING AND HEALTH, TEACHERS COLLEGE, COLUMBIA UNIVERSITY, NEW YORK. LATE SUPERINTENDENT OF NURSES AND PRINCIPAL OF TRAINING SCHOOL, JOHNS HOPKINS HOSPITAL, BALTIMORE, MD

WASHINGTON
GOVERNMENT PRINTING OFFICE
1912

CONTENTS.

	Page.
Letter of transmittal	5
Recent progress in nursing	7
Relation of training schools to hospitals	14
Payment to students	16
Types of hospitals	17
Hospital capacity	17
Relation of capacity to average number of patients	18
Requirements in capacity for maintaining training school	19
Special hospitals	20
Utilizing students	20
Hospital finances	21
Variations in hospitals	22
Relation of hospital to admission requirements in training school	23
Candidates and courses of study	24
Preliminary education of candidates	24
Age of candidates	28
Character of work for students	28
Hours of work for students	29
Length of academic year	32
Need of vital statistics	33
The curriculum	34
Preliminary courses	35
Preparatory courses reported in training schools in June, 1911 (table)	38
Time given to subjects of study	42
Instructors	44
Libraries	45
Tuition fees for preliminary instruction	45
Relations to colleges	46
Training schools for nurses in universities	46
State registration	53
Enactments	53
Examining boards	56
Training-school inspection	57
Some important features of State laws for registration of nurses	59
Table 1.—Comparative statistics of nurse training schools	61
Table 2.—Summary of statistics of schools for training of professional nurses, 1910–11	61
Table 3.—Statistics of schools for the training of professional nurses for the school year 1910–11—Class A	62
Table 4.—Hospitals and schools offering postgraduate or special courses	92
Table 5.—Statistics of schools for the training of professional nurses for the school year 1910–11—Class B	94

LETTER OF TRANSMITTAL.

DEPARTMENT OF THE INTERIOR,
BUREAU OF EDUCATION,
Washington, D. C., February 23, 1912.

SIR: Within comparatively recent years the trained nurse has become an important and constant helper of the physician, not only in public and private hospitals, but also in the home, taking the place of untrained watchers who, however willing, can render only an ineffective service. This work of nursing has rapidly advanced to the position of a profession requiring careful preparation for admission. Thirty States of the Union have enacted laws for its regulation, and all the other States will probably do the same within the next few years. In several of the larger cities nurses are employed by the boards of education to visit the public schools, to look after the minor ailments of the pupils, and to assist in caring for their health. For the education and training of nurses, schools have been established and are maintained in most of the States. There are at present more than 1,100 such schools, with an attendance of approximately 30,000 students. For this reason, the education of nurses and the educational status of nursing have become questions of general importance and public interest, on which the Bureau of Education, in pursuance of the purpose for which it was established, should give information. The accompanying manuscript, prepared by M. Adelaide Nutting, is an attempt to do this. Miss Nutting was for several years connected with the Johns Hopkins Hospital School for Nurses, and is at present director of the department of nursing and health of Teachers College, Columbia University, New York, and has therefore had unusual opportunities to prepare herself for this work. I recommend that the manuscript be published as a bulletin of the Bureau of Education.

Respectfully submitted.

P. P. CLAXTON,
Commissioner.

The SECRETARY OF THE INTERIOR.

EDUCATIONAL STATUS OF NURSING.

RECENT PROGRESS IN NURSING.

Although there have been no radical changes in methods of education in nursing during the past five years, there are yet substantial evidences of progress to record. Training schools for nurses throughout the country are steadily, even if slowly, effecting improvements in their work and conditions. The professional field of nursing is widening and embracing new and important activities, and offering new incentives to effort. Public interest in hospitals and training schools is growing, and an intelligent public opinion on nursing affairs is gradually forming. The education of nurses, long looked upon as a matter in which hospitals only were concerned, is now beginning to be seen as a matter in which the public also is deeply and necessarily concerned.

In training schools themselves improvement is shown as follows: Systematic instruction is steadily replacing unrelated courses of lectures, better facilities for teaching are provided, small libraries are beginning to appear, occasionally a microscope is secured, more time is allowed for teaching and for study, work is brought from the evening into the daytime. Little new subject matter is introduced, but the ordinary subjects are handled in a more thorough and comprehensive way, and there is a slight but evident tendency toward a better adjustment of theory and practice. In a very few schools higher standards of teaching and a better quality of work are secured through the introduction of specially trained teachers. Among the schools which have established such teaching positions are those belonging to the Johns Hopkins Hospital at Baltimore, the Massachusetts General Hospital at Boston, and St. Lukes, the Presbyterian, and Bellevue Hospitals, in New York. Perhaps the most conspicuous improvements are those providing better housing and living conditions for students, interesting examples of which are seen in the new, spacious, and attractively equipped buildings for students, recently erected by the Presbyterian, Bellevue, and Metropolitan Hospitals in New York and by the Children's Hospital in Toronto.

Affiliations between training schools continue, and are doing much to consolidate and strengthen the educational system, and to provide larger opportunities for many small and special schools in which

good work, though of a limited nature, is done. These affiliations are serviceable so long as it is borne in mind that a group of affiliated weak schools does not result in a strong school.

A distinct evidence of progress is seen in the demand for postgraduate work. It is encouraging to find so large a number of graduate nurses seeking opportunities for further training and knowledge, but it is disturbing to note that their laudable demand can not be adequately met at present in most hospitals, since in order to secure a minimum of actual instruction they are obliged to perform a maximum of service for the hospital. There is great need of careful study of graduate work in nursing and of the organization of suitable courses to meet well-defined needs. Apart from the schools, but reacting constantly upon them in a way both stimulating and helpful, have been the steady advances in legislation; enactments governing the examination and registration of professional nurses are now on the statute books in 31 States. They have proved a powerful agency in promoting the better education of nurses and in bringing up the standards of training schools.

The most important evidence of progress and the most significant is the endowment in November, 1910, of a department of graduate work for nurses at Teachers College, Columbia University, New York. This is the outcome of a course in hospital economy established at the college in 1899 by the American Society of Superintendents of Training Schools for Nurses and maintained by them until 1910. Lacking, however, adequate financial support, the work could not be satisfactorily developed, and its endowment by Mrs. Helen Hartley Jenkins, a trustee of Teachers College, places the work upon a permanent and stable basis and opens the way for long-needed developments. The amount of the gift is $150,000, and it marks the first effort in this country to make suitable financial provision for any part of the education of nurses.

The department thus endowed is called Nursing and Health, the latter part of the title serving to indicate the scope of its work. It now embraces three main divisions of work and prepares, first, for teaching and supervision in training schools for nurses; second, for administration in hospitals and training schools; and third, for the more distinctly social and preventive branches of nursing, such as visiting nursing, school and municipal nursing, sanitary inspection, etc. Courses are appropriately grouped and arranged in preparation for each of these fields of work.

For the social field, courses in the college and university are supplemented by work in the school of philanthropy, in settlements, and in the municipal health department.

The requirements for admission to the department of graduate work are completion of an approved course in a secondary or normal

school, followed by a course of two or three years in a training school of accepted standards. Thirty-five students entered the department last year.

The enlargement of the professional field is continuous. Not only has the specializing tendency of the day brought into existence new forms of activity within those branches—institutional, private, and social—in which nurses have long been engaged, but new types of work are developing, and entirely new social and public demands are being made upon the nurse.

Moreover, it is unquestionable that, however largely supply may exceed demand in other fields of work, this at present does not hold true of nursing, for even in the older branches of work, which have been longest established and are best known, the demand for properly trained and competent workers is beyond the supply, while for all of the higher and more important positions in hospitals and training schools, and for the equally important fields of social and civic work which are rapidly opening up, there is as yet no adequate supply.

In institutions, such as hospitals and training schools, where formerly the superintendent of nurses was the sole officer of administration and instruction (exclusive always of the instruction embodied in the courses of lectures by physicians), or where at most she had one assistant to aid in supervision and instruction, there will now, in most larger schools, be found a graded staff of assistants and supervisors. The double office held by the superintendent of nurses is now pretty generally recognized by the additional and appropriate title of principal of the training school.

An interesting outcome of the efforts to improve training schools by a better organization of teaching is found in the creation of new positions involving little or no executive work and providing a fairly well-defined field of instruction calling for trained teachers.

In addition to these important developments in training schools and in the nursing departments of hospital work, there is an interesting and growing field for graduate nurses in actual hospital administration, and the larger number of moderate sized, and almost all of the smaller, hospitals throughout the country select trained nurses as superintendents. In the State of New York the inspector reported recently that about 55 per cent of the entire number of hospitals answering to this description were under the direction of nurses. Other types of institutions are the various sanitaria for the treatment of tuberculosis, for the care of children, for convalescents, fresh air homes, and those of a kindred nature which are preventive in purpose as well as charitable, and which have frequently important educational features in their work.

The tendency toward specialization which is developing in institutions is also observed as a growing feature of private nursing, and

there is an increasing call for nurses who have received some special preparation beyond that which the ordinary training school offers, for the care of certain special forms of disease—notably, for instance, the nervous disorders of different types, and certain diseases of infants and children where there are great disturbances of nutrition.

Dr. Lewellys Barker, physician in chief to Johns Hopkins Hospital, says of the development in these directions:

On looking over the history of nursing, I have been very much struck with the rapid expansion of the work intrusted to nurses. It must be remembered that formerly physicians did, or tried to do, nearly everything which is now done by the nurse; even the care of the bed, of the linen, and of the bathing was formerly a part of the physician's work in the hospital wards. Nurses soon demonstrated that a large part of ward work could be better done by them than by physicians, and, more and more, routine measures have been placed in their hands. Anyone who works in a hospital realizes that this transfer of routine from the physician to the nurse is still going on and this may account for an occasional misunderstanding perhaps as to what is a nurse's duty and what a physician's. I believe that nurses will do well to welcome, rather than resist, every additional opportunity for service, and the time may not be far distant when nurses will not only count the pulse, take the temperature, record the blood pressure, sterilize instruments, prepare dressings, etc., but will do far more, including, perhaps, sometimes many of the routine laboratory examinations now made by physicians. Indeed, there is already a demand for trained nurses who can make leucocyte counts, hemoglobin determinations, quantitative estimates of sugar and albumin, and scientific dietary calculations and weighings.

Thus far, nurses have, for the most part, been content to be general practitioners of nursing, but already some have begun to specialize, and it needs only half an eye to see that the near future will be marked by an extension of this tendency to specialization in nursing. While each nurse should have a general training in fundamentals of the art, there is no reason why she should not, like the physician, choose some one particular field of work which appeals to her interest and for which her natural talents may make her especially suitable. The time is fast approaching when we shall have nurses who attend chiefly or solely obstetrical cases, others who care only for pediatric cases, only for nervous and mental cases, only for fever cases, only for operative cases, only for metabolic cases, etc. Nurses who desire successfully to specialize will be compelled to acquire unusual training and experience, just as is the medical specialist. * * *

Nursing is the one profession in which all, men as well as women, will admit that women excel men. It is highly desirable that a sufficient number of the women of the better class be attracted to this work. If we expect to draw the best women into trained nursing, we must do what we can to make the rewards what they should be. The pecuniary return is not the only one to be considered. The kind of education given, the social regard insured, the interests aroused, the careers opened up, are really more motivating than any mere monetary consideration. As long as nurses were drawn from the lower classes and as long as the training was merely manual and not intellectual, there could be no profession of nursing. Now that nursing is offering ever new incentives, the position of the trained nurse has become more elevated, the educational standards are high, the time of nursing has become long enough to permit of thoroughness without overtaxing, the material position of nurses is being improved, the opportunities for higher careers in nursing are multiplied, we find the profession appealing more and more to the best class of woman. (The Johns Hopkins Nurses Alumnæ Magazine, June, 1909, pp. 84–86.)

Nowhere, however, has the growth of opportunity for nurses been so great as in the field which may be broadly termed that of social welfare. Under the form and title of district and visiting nursing, a system of activities has been developed which makes of the nurse not only a skilled agency for the relief of suffering, but a teacher of sanitary and healthful living, and a power for the prevention of disease. This is looked upon as one of the most promising movements of modern times for social betterment.

Briefly reviewed, these various phases of work include ordinary district nursing among the sick poor, in which, according to Miss Waters' Visiting Nursing in the United States, there were engaged, in 1909, 566 associations, large and small, and something under 1,500 nurses. Recent reports bring the latter number up to nearly 2,000.

The important special branches of this work are school nursing, tuberculosis work, infant welfare work in milk stations and clinics, social service work in hospitals, dispensaries, and elsewhere, and welfare work in factories, department stores, and other industrial and commercial fields; while insurance nursing, the most recent form of preventive work, does not separate itself from regular visiting nursing and may touch at certain points almost any phase of these various branches of work. Maternity and contagious work are very special branches too little developed apart from institutions to be included here.

The social-service departments, which have been recently developed in connection with many leading hospitals and which are largely under the direction of nurses, afford peculiarly interesting and valuable opportunities for public service. The term "social service" is made to cover many activities on behalf of the patient who may have just entered or just departed from the hospital; but the main purpose of this new department of hospital work is the definite one of doing for the patient, through proper channels and agencies, certain things which are essential for his physical and mental welfare, and which the hospital can not do for him unaided. It is the avenue through which the hospital seeks for the advancement or completion of its own work, for special expert diagnosis, advice, and aid in matters affecting its patients, but not necessarily physical in their nature.

If, in some directions, these activities seem remote from those fields of service for the sick into which the nurse is usually led directly from her hospital training, the fact that she has not sought them but that they have sought her shows perhaps that the education, training, and discipline of a nurse do prove a valuable preparation for other work than nursing—a solid foundation upon which to build in many special directions. The profession of nursing is here taking on fresh significance, and the nurse to-day who is concerning herself with that

greatest of all human problems, the protection of the health of the people, represents a comparatively new idea. She is not a nurse in the usual acceptation of that term; she is a woman who has had the scientific training of a nurse, and her adequate use of this training will make of her an important factor in the progress of the human race. In the light of these new activities, which place new burdens and responsibilities upon her shoulders, her education becomes a matter of large significance.

In considering the activities of these new fields and their inherent needs, Dr. C. E. A. Winslow, professor of biology, College of the City of New York, says:

> All this requires obviously enough a highly trained and specialized expert. I have no knowledge of the requisites for "sick nursing," but it is quite clear that in public-health work the visiting nurse must be no empirically trained upper bedside servant. She must understand thoroughly the general fundamental laws of hygiene and sanitation, which means a mastery of the principles of physiology and bacteriology, and she must have a minute grasp of their special application in the field of her own work, whether it be school nursing, tuberculosis nursing, or infant hygiene. She must know these things not merely as a practitioner but as a teacher, which means not only a knowledge of details but a vision of their right relationship and a talent for effective presentation.
>
> Always there are the educational weaknesses inherent in an undertaking which is not primarily educational in aim. The course is apt to be carelessly planned, the teachers those who chance to be available, the teaching what they happen to find it easiest to give, and the laboratory equipment hopelessly inadequate. Most fundamental of all is the problem of time. It is absurd to attempt to train the nurses we need for the public-health campaign by a course which involves 2 or 3 hours a week of theory and 50 to 60 hours in the wards, not hours of clinical instruction, but for the most part a routine of unenlightening and exhausting manual work. The relation between the hospital and the training school should be a symbiotic one; it more nearly resembles a case of simple parasitism. ("The rôle of the visiting nurse in the campaign for public health," by C. E. A. Winslow. American Journal of Nursing, Aug., 1911, pp. 917–918.)

The extraordinary development of the work of the district nurse and its intrinsic importance have been admirably discussed by Dr. Henry Favill, superintendent of the Chicago Tuberculosis Institute. After pointing out that because of her essential adaptability to the situation, whatever it may be, the district nurse is wanted as school nurse, insurance nurse, industrial nurse, and in other different capacities, he says that in this visiting-nurse problem the great question now is that of expansion, which is inevitable; that we have arrived at practically an "impasse." He says:

> The point has been reached where the structure is greater than the foundation, and the foundations have got to be broadened to insure the stability of the superstructure. * * * Shall we follow the legitimate evolution of this medico-sociologic time or shall we set arbitrary definitions to which it shall be confined? And this is a question which faces us as a very important question, because no work which has in it the inherent values that are in this system of visiting nurse has any excuse for being jeopard-

ized by mistakes, and the obligations to settle this question wisely and broadly are enormous. (Address at twenty-fifth anniversary of founding of Boston District Nursing Association, by Henry Baird Favill, M. D. American Journal of Nursing, Oct., 1911, pp. 41–42.)

The evidences of progress thus measured are clear and considerable. They show definite achievement and unquestionable advance. There are, however, evidences of another nature to be weighed, which show that tendencies are not all in the direction of progress and that some are markedly subversive of it. Reactionary ideas have taken distinct shape in certain places, and destructive forces are constantly at work. Perhaps the most noteworthy and certainly the most interesting and dramatic instance in recent years of reaction working freely against nursing education was seen in New York in 1907, when, during a brief period, moved apparently by a common impulse, three important training schools, the New York, the Roosevelt, and the New York City, abolished the three years of training which had been in operation for several years and returned to the original course of two years, abbreviating the curriculum to correspond and making other radical changes. This movement seemed to be the outcome of distinctly local feeling. It was limited to a few institutions and does not appear to have had any effect upon the general situation.

The condition in training schools which is causing grave concern among those who have long been struggling to improve the education of nurses is the persistence of low standards for admission. The enormous multiplication of hospitals and sanitaria throughout the country, with the consequent unrestricted development of training schools as a part of their working organization, has led to a very large demand for students essentially for utilitarian purposes. No adequate supply could be secured through the usual sources with the maintetenance of suitable standards, and such standards have therefore been lowered or sacrificed to meet the current needs of institutions. Overwhelming evidence is available from training schools and from public and private sources showing the inferiority from almost any conceivable or tenable standpoint of the majority of present candidates for admission to training schools. Some readjustment is needed of the conditions under which students work. Some reconstruction is imperative of a system of education which was admirable when it was established 50 years ago, for other educational advantages were then not available. But it is out of right relationship with the thought and methods of education to-day.

The subject is discussed in detail in the following pages, with some suggestions as to the direction which these changes should take.

RELATION OF TRAINING SCHOOLS TO HOSPITALS.

It should constantly be borne in mind, in discussing the education of nurses, that training schools throughout this country are established as integral parts of hospitals and are conducted in all their functions under the control and general direction of hospital authorities. Recent statistics from nearly 700 training schools show that not more than 6 of them were established on any other basis than this, and that the hospital and the school are, as one response to the question on this subject stated, "all one." All schools are therefore in one sense proprietary. The system is universal, and it has become so for several reasons.

The first and most obvious reason, and the one most generally advanced, is that the school forms the most economical way by which the sick in the hospital can be nursed with a reasonable degree of efficiency. Under almost any conceivable conditions in hospitals this would probably hold true, and it is unquestionably a strong factor, perhaps the controlling factor, in the entire situation. But it should not be accepted as the only one. After giving the fullest recognition to this important aspect of the situation, after according due weight to the advantages which this school system provides for proper organization and direction of nursing work and for control of the workers, there yet remain other and less tangible reasons which should none the less be considered. There is something in the spirit which the young student brings to her work, the ardor and enthusiasm in acquiring new and wonderful knowledge, and in testing her daily increasing skill, which is a genuine and valuable asset to the hospital. It is indeed a matter of history and of fact unquestioned to-day that the hospital owes much of its present status, its position in the community, and its powers in many important directions, to the presence within it of an organized body of women whose prevailing characteristics have been and are of a high order. The search will be long before there will be found any body of persons, either students or workers, animated by higher ideals of service, guided by nobler traditions of duty and devotion, willing to render a larger measure of self-sacrificing and courageous labor for others. The standing of a hospital in a community may usually be measured by the character of its nursing staff, and if it desires to prosper and to progress it must always be able to stand the test in that direction.

To preserve these high ideals and traditions which the founders of the early training schools established and their followers have tried to uphold and cherish, and at the same time to add to the value and maintain the dignity of nursing by fostering its every effort toward larger intellectual growth, toward more definite educational standards, as well as toward increasing skill and technical efficiency, are

the important functions of the modern training school. Any conditions, therefore, in the hospital or out of it which affect or threaten to affect the training school to the injury of these ideals, traditions, and standards become of immediate and direct importance to the hospital, as well as to the entire community.

It is therefore with the interests of the hospital in mind, as well as the interests of students and the public whom they will eventually serve, that some of those who have been for many years studying closely the problems of nurses' education are asking if the present system which has finally placed the hospital in full and unquestioned control of the education of nurses will prove favorable to the best educational growth and development, to the preservation of those high traditions, standards, and ideals which, important in all professions, are essential in nursing. It is the belief of many of those who have long been identified with training-school and hospital work, and who have been largely instrumental in creating and upbuilding in both hospital and school such educational standards as now prevail, that the principle of absolute control by the hospital is unsound and that in practice it does react unfavorably upon the education and training of nurses. It is their belief that this system of control affects profoundly the essential matters of standards of admission, hours of work, length of course, conditions of student life, and, above all, the freedom of the school to develop the education of nurses in response, not only to the current needs of a particular institution, but to changing and growing social needs in the community in which the educated nurse plays an increasingly important part.

The attitude of the hospital to this principle, however, is clearly defined in the statement here quoted from the report on training schools recently published by a special committee of the American Hospital Association. "The committee has tried to consider the interests of the school apart from the hospital wherever possible. At the same time the committee recognizes that the training school is an integral part of, and subordinate to, the hospital." (The International Hospital Record, Sept. 15, 1909, p. 9.) And as if in proof of the soundness of this contention history points to the early training schools of this country, Bellevue in New York, the Massachusetts General in Boston, and others of a later date, such as the Albany (N. Y.) Training School, which, originally established by bodies outside of and independent of the hospitals, were unable to retain that status and have found it necessary to place themselves wholly or largely under hospital government.

In order that the full value of the school to the hospital may be more clearly understood, it should be explained that an actual nursing staff for the hospital is created by the establishment in it of a school of nursing, and, through the organization of its student body into a

corps of workers of various grades—probationer, junior, senior—adjusted to the varying needs of the hospital. The hospital itself becomes the school, and the actual daily and nightly routine of work in its wards and other departments stands for a system of education. The supervision which would ordinarily be required for the proper conduct of the work becomes a form of instruction; the supervisors or head nurses are, as a rule, the instructors; the superintendent of nurses is also the principal of the training school. The entire burden, in fact, of the actual care of the sick and of their immediate surroundings rests upon the students of the school; and in many hospitals, particularly those of moderate size, the students are also filling executive official positions as head nurses, assistants, night supervisors. In these capacities they are responsible for the supervision and direction of the work of younger students and for much of their practical instruction. Under such a general system the training of nurses has been carried on during the 40 years that have elapsed since the schools were first established in this country; under it to-day about 30,000 students are being trained, and the idea is now firmly entrenched in the public mind that the only available way by which the hospital can secure an adequate nursing staff for its patients is through the student body of a school which the hospital establishes, owns, and controls.

The immediate advantages of this system do not lie wholly with the hospital, for the student receives, without incurring any expenses for tuition, board, lodging, laundry, and usually uniforms, such education and training as the hospital is prepared or willing to offer, and this, even when poor in character and meager in amount, is always of definite material value to her, enabling her as a rule to become self supporting as soon as she leaves the hospital.

PAYMENT TO STUDENTS.

In the majority of schools the student's services to the hospital are distinctly recognized by the payment of a small sum of money monthly, stated to cover expenses of uniforms and textbooks, but ordinarily more than double the amount needed for these purposes. It is estimated that expenses for uniforms and textbooks do not usually exceed $50 per student annually, while the sum of money provided students for this purpose is seldom less than $84 per annum and it frequently goes as high as $120 per annum. Formerly these money payments were higher, ranging from $120 to $180 annually and were not infrequently referred to in the announcements as wages. But of late years the amount has been gradually lessened, until $8 a month appears to be the sum given in the larger number of schools. Recent reports show that in 24 schools, largely those of high standing, the practice has been abandoned altogether, and the money thus re

leased is applied in some measure to improvements in educational methods. Its essential obligation to the student, the hospital does, however, clearly recognize, as is shown by the statement commonly found in training school announcements that an ample equivalent for the services rendered by the student is provided in the education and training offered. What that equivalent shall be is naturally determined entirely by the hospital, which has thus established an educational system and assumed educational functions.

The hospital of modern days, with its improved facilities for the treatment of disease and emergencies, in the way of physicians, nurses, buildings, and equipment, has become a popular institution, and no community, however small, likes to be without resources of this nature. Physicians, realizing the better opportunities which the hospital usually offers for the exercise of their skill and for the recovery of their patients, press its advantages, and a change in public sentiment toward the hospital has gradually come about which has resulted in a remarkable increase in the building of such institutions. This is especially marked in the smaller towns and communities.

TYPES OF HOSPITALS.

In type, character, and capacity, as well as in aims and purposes, these modern hospitals show the widest variations. In type there will be found a long list of institutions, including: (1) The large municipal hospitals for the treatment of all classes of disease and of patients (with the exception of private paying patients); (2) the large, endowed hospitals, such as are found in some numbers in all of our large cities, general in the scope of their work and treating all classes of persons; (3) the smaller hospitals of a somewhat similar type in the smaller towns and communities; (4) the special hospitals, such as those devoted especially to (*a*) surgery, (*b*) emergency work, (*c*) obstetrics, (*d*) nervous disorders, (*e*) diseases of women, (*f*) diseases of infants and children, (*g*) diseases of the special senses, namely, the eye, ear, throat, and the skin, (*h*) tuberculosis, (*i*) contagious and infectious diseases, (*j*) chronic and incurable disorders, and (*k*) convalescents. These may be maintained by public funds for the benefit of the public, by private contributions for the same purpose, or by private capital for private profit.

HOSPITAL CAPACITY.

In capacity the variations are naturally very great. Statistics on this point show that in 692 hospitals reporting to the Bureau of Education the range is (exclusive of State institutions for the insane) from 5 beds up to 500. About 60 per cent of the entire number have a daily average of under 75 patients, and 172 hospitals, or about 25

per cent of the whole number, have a daily average of not more than 25 patients.

The capacity in these hospitals is as follows:

	Hospitals.
4 to 10 patients daily were found in	39
10 to 15 patients daily were found in	43
15 to 20 patients daily were found in	58
20 to 25 patients daily were found in	32
Total	172

Thirty-nine hospitals did not reply to this question.

RELATION OF CAPACITY TO AVERAGE NUMBER OF PATIENTS.

The average daily number of patients is used here rather than the stated number of beds because it has been found after careful study and comparison that the number of beds is no true guide to the actual daily number of patients. This average daily number of patients in nearly 50 per cent of hospitals of the class referred to has been found not to exceed one-half the hospital's capacity in number of beds; in about 75 per cent of these hospitals the average number of patients daily was not over three-fourths of the hospital's capacity, and in no instance in this group was the hospital used apparently up to its stated capacity in beds. In all but 5 of the 172 small hospitals (averaging 25 patients daily or under) training schools were maintained, and 100 of them required three years for the completion of the course of training. To the suggestion that probably some of these affiliate with larger hospitals, the answer is that 31 hospitals reported some such arrangement covering from 3 to 6 months, but that 115 hospitals out of the 172 had no affiliations, and the remaining number overlooked the question on this subject.

The number of beds in a hospital has an important bearing upon the educational facilities it offers. Taken in connection with the varieties of service, the number of beds affords some idea of the scope of work in a hospital, of the amount and variety of opportunity which it affords for the observation and study of disease and for training in the practical procedures in nursing.

The ability of the hospital to give a thorough and complete training in nursing rests then mainly upon two conditions: First, the character, variety, and extent of its service; second, the state of its finances. The first condition determines whether or not it affords suitable and sufficient opportunities for instruction and training; the second indicates its ability to provide suitable instructors, equipment, accommodation for students, and other appurtenances of a school. If the hospital treats medical, surgical, and obstetrical patients, and admits children as well as adults of both sexes, it comes

under the head of general hospitals, and as such may be considered a suitable ground for the general training and education of nurses. It is obvious that the question of numbers must be considered here, and that the very small hospitals, even though some of them may justly claim to be general in the scope of their work because they treat all classes of cases, are too restricted in actual numbers of patients to afford the requisite opportunities for observation and experience.

REQUIREMENTS IN CAPACITY FOR MAINTAINING TRAINING SCHOOL.

The New York State Education Department, in its registration of nurses' training schools, states that—

> the hospitals with which such schools are connected must have not less than 50 beds and a daily average of 30 patients. Each bed must meet the requirements of the State board of charities as to air space. The hospital should provide experience in the following departments of nursing: Medical, surgical, obstetrical, and pediatric. Training schools connected with the hospitals not providing adequate opportunities for experience in all of the above departments must become affiliated with institutions approved as giving such experience. (Education Department, Bulletin, Albany, N. Y., July 1, 1911, p. 5.)

The committee on training schools of the American Hospital Association, in considering this question in a recent report, says:

> It is the sense of the committee that hospitals of less than 25 beds which can not affiliate or maintain some association with larger institutions, on account of their isolated or financial condition, should not attempt to maintain training schools for the training of nurses. (The International Hospital Record, Sept. 15, 1909, p. 8.)

The Royal British Nurses' Association recognizes hospitals having 40 beds and upward as qualified to train nurses and excludes the rest. Other advocates for nurses' registration in England are pressing for a rule excluding all hospitals below 50 beds from this privilege. (The Hospital, London, Oct. 24, 1908, p. 103.)

The national committee on Red Cross nursing service has taken a similar stand, and at its regular meeting in Boston, June 1, 1911, decided that "only those nurses should be eligible for enrollment who are graduates of training schools connected with general hospitals of at least 50 beds, unless the applicant has had subsequent hospital experience or postgraduate work." (American Journal of Nursing, Sept., 1911, p. 1033.)

Such a minimum requirement as has been established in New York State is a definite gain, in that it recognizes the necessity of some standard where educational work is carried on. The minimum is still low, however, and should be so considered. The difficulty in exercising any real control in this situation is great, since, although it is not so stated, the small hospital, as a rule, does consider itself helplessly dependent on the training school to carry on its work.

Dr. Henry M. Hurd, of the Johns Hopkins Hospital, puts the matter very clearly in a recent article. He says:

> In some of these smaller, unendowed hospitals, to procure graduate nurses for their service might incur an outlay which would imperil the very existence of the hospital. Hence the need of a training school for nurses with a small salary roll, instead of a large one. ("State registration and the education of nurses in the United States." The Nursing Mirror, London, Apr. 17, 1909.)

SPECIAL HOSPITALS.

Specialization in medicine has led, naturally, to the development of special hospitals or sanitaria designed to treat either a particular form of disease or a particular class of individuals. Examples of this type may be found in those special hospitals for the treatment of women. Such institutions have been springing up rapidly for years in all fairly well settled parts of the country, and now exist in large numbers. The majority of these are purely surgical in nature, frequently limited to gynecological disorders only, usually small in capacity, owned and managed by a physician or a small corporation, and, as a rule, devoted exclusively to private, paying patients. They are essentially commercial in character, intent, and methods. About 16 per cent of the 692 hospitals reporting to the Bureau of Education came under this classification, in that they were special, or private, or both.

As regards essentially private institutions, devoted to the care of paying patients, affording, for training, meager opportunities in a restricted field, it would seem as if the question of a school for the education of nurses could hardly arise; yet, private and special hospitals and sanitaria of this type, in numbers, have not hesitated to announce themselves ready to receive pupils and meet the obligations which a school of nursing involves. Such special branches of work as these hospitals offer are frequently found as a part of the system of a general hospital, and in these it is considered that from four to six months affords ample time and opportunity for training the nurse in any one such branch, the briefer period named being the commonly accepted period. Longer training in such special branches of work is only recommended in those cases where the student, after having received the full general groundwork, wishes to devote herself solely to a special field of work, such, for instance, as surgical nursing, or obstetrics, or the care of patients with nervous disorders, or the care of children. Yet a course of training for nurses covering three full years is quite commonly found in hospitals of the special type.

UTILIZING STUDENTS.

Not only is all the general nursing in these hospitals done through the services of the students, but in certain instances the students themselves become an actual source of direct and considerable profit

to the institution. This happens when the student enters such a private hospital for two or three years and is placed at a very early stage of her work upon special duty with a single patient, a considerable fee being charged for her services. In some instances it is said that pupils are kept at such special individual work during the greater portion of the course of their so-called training, the fees for their services going directly to the management.

But this does not exhaust the methods by which hospitals can utilize for their own profits the services of their students.

Out of the entire 692 hospitals from which statistics were recently received, 248 were found sending out their pupils into families in the community for private nursing, for periods ranging from 2 to 26 weeks, the payment for this service in almost all instances going directly to the hospital. It was difficult to secure explicit information as to the amount of time which student nurses really are devoting to outside work of this nature. Fifty-nine hospitals stated that they sent out their students, but omitted any reply to the question asking about the average amount of time in which the student was so occupied, using merely the vague but suggestive phrases "time varies," "as needed," or "subject to call."

It can be readily seen how the effort to guard the education of nurses by suitable legislation would interfere with such exploiting of the pupil nurse, and it is a well-known fact that the most persistent opponents of such legislation in the various States have been found among those representing such hospitals—those whose financial interests were involved in maintaining the status quo.

There are schools which include in their curriculum a brief course in visiting nursing, and certain students may elect this work among the sick in the poorer districts. This is always done without payment of any kind.

There are also occasional instances of emergencies in small communities where fully qualified nurses are not readily available, which may be temporarily met through some member of the nursing staff of the hospital. Such instances as these are not included in the situation above described. This discusses the practice of sending out pupil nurses during their training to earn money for the hospital, and urges that as a practice it can not be too strongly condemned.

HOSPITAL FINANCES.

Assuming, however, that the hospital is neither special nor private, nor so very small as to be unserviceable, that in type, character, and capacity it affords a suitable ground for the training of nurses, there should, it would seem, be some assurance that it is financially able to carry the double burden of a hospital and a school, that it can meet the expenses of its own work, and in addition can provide in

some reasonable measure at least for the common fundamental needs of a school.

Now, it is not generally understood what extraordinarily expensive places hospitals are to maintain; the work in them goes on unceasingly day and night, and service must be provided accordingly. The service must be in the main of an exceptionally high type, there must be certain trained and skilled workers, the appliances are almost invariably costly in nature, the equipment must be liberal enough to meet any emergency, it must stand the wear and tear of use for 24 hours out of the 24. The food ought to be the best in quality, the best and purest milk, the freshest eggs, good meats and vegetables and fruits; drugs, disinfectants, and dressings are costly, and their use is enormous. While every hospital should be watchful of expenses, too rigid economy in any one of the above matters may defeat the very purpose of the institution. The majority of hospitals are engaged in a constant struggle to make ends meet, and it is rare to hear of one that has an income large enough to fully and satisfactorily meet its legitimate expenses. How, then, can it adequately meet the equally legitimate expenses of a school? It has no margin for educational needs, and hospital authorities confronted daily with the pressing problem of actual necessities in the way of accommodation, food, clothes, drugs, appliances, and equipment are often and not unnaturally impatient with requests from the head of the training school for proper consideration for the needs of her department.

To pay for instructors, books, teaching material, and other of the simplest necessities of a school, in the face of these imperative hospital demands, seems to them an unjustifiable action. In the larger hospitals it is usually done with reluctance and inadequately; in the smaller it is usually not done at all. Yet schools can not exist without instructors, without libraries, without classrooms, without teaching material.

VARIATIONS IN HOSPITALS.

With hospitals of many types already existing, with a tendency toward increasing specialization so clear that the development of new types seems inevitable, with wide variations in capacity and in variety of service even in those of the same type, and with essential differences in character and methods of work, the difficulty of maintaining any serviceable uniformity in standards in the education of nurses is not only formidable; it is insurmountable under present conditions. The "equivalent in education" which hospitals offer their students must in the last analysis be determined, not by definite, recognized, and generally accepted standards, but by the ability of each particular hospital to measure up to such standards, and to provide adequate educational opportunities, by its sympathetic interest in the general problem of education, and by a full acceptance of its responsibilities and obligations in the educational work it has undertaken.

RELATION OF HOSPITAL TO ADMISSION REQUIREMENTS IN TRAINING SCHOOL.

At the very outset, the hospital demonstrates its unfitness for this responsibility in the control it exercises over the selection of candidates for admission to the training school. The first function of the school is the establishment of certain definite suitable requirements for admission, but the school, it must always be remembered, is the nursing staff of the hospital. The first function of the hospital is to secure enough workers of various grades to meet its daily needs, always immediate and urgent. Numbers of students it must have, whether or not they meet such standards for admission as the school, to retain its function, should maintain.

So long as there were few hospitals requiring students, and few professions other than teaching and nursing open to women, there were many more candidates for admission to training schools than could be received; a fairly rigid system of selection prevailed, and those who entered and remained were well qualified to meet the educational and other tests and demands of the day. But with the remarkable advances of recent years in medicine and surgery, aided by a quickening of social and philanthropic spirit widespread in its dimensions, hospitals have not only arisen in great numbers in every section of the country, but those already in existence have been steadily enlarging and expanding, and a continuous improvement and elaboration in work and technique is taking place. One thousand three hundred and sixty training schools are recorded in Sutton's Hospital and Institutional Directory for 1910. With this rapid growth in many directions has come a constantly increasing demand for students, and there is now great difficulty in securing enough to meet the needs of the hospital and at the same time maintain even the most moderate requirements for admission. There are, it appears, not only too many hospitals in competition for the existing number of qualified candidates, but there are too many other interesting and less arduous occupations open to women to enable nursing, under present conditions, to hold its own as an attractive field.

With very few exceptions, all hospitals, large and small, alike confess a great and increasing difficulty in securing enough students to carry on their nursing work. This is a matter of common anxiety among training-school superintendents and principals, and it is obvious that the difficulty in this direction is serious, is growing, and that it offers a great problem. The only way in which it appears to be possible for the hospital to deal with it, is by lowering still further the requirements for admission, already far too low, or by simply ignoring them altogether.

The superintendents of several important schools frankly admitted to the writer not long since that they had been obliged, in order to

get enough pupils to do the work, to bring into their classes entering that year a considerable number of students who ought not to have been admitted, owing to their inability to measure up to any satisfactory educational or cultural standards. Their reason for admitting these undesirable candidates was simply the necessity of getting the work in the hospital done.

CANDIDATES AND COURSES OF STUDY.

PRELIMINARY EDUCATION OF CANDIDATES.

Further evidence of the difficulty of securing students is the fact that in the State of New York, where the requirement has been made of one year of high-school work for admission to training schools, the efforts to have that one year removed as a requirement have been persistent and have come from some of the most representative hospitals. Their need for a large staff of workers is imperative, and it overshadows completely to them the need of the school that its standards shall be maintained.

It is not assumed that these representative training schools could not attract a fair number of students of even much higher qualifications than those stated in the requirements (the following statistics show that they can do so), but it is certain that they are unable at present to attract enough to supply adequately the needs of the hospital, and it seems tolerably clear that the principle of dependence upon the student body for all of the actual nursing work, and for a very considerable amount of other work, some purely domestic in nature, some supervisory and executive, is so universally accepted and so deeply rooted as to render hospitals generally unwilling to tolerate any conditions which affect this principle and which require a modification or frank abandonment of the plan and system upon which it is based.

Educational qualifications of 303 students forming the classes admitted in 1910 to 7 representative training schools in New York City.

Education.	Number of students.
College:	
4 years	10
3 years	
2 years	2
1 year	3
Normal school	20
High school or collegiate institute:	
4 years	107
3 years	24
2 years	44
1 year	14
Private schools (from 1 to 3 years)	58
Academy	2
Common or grammar (supplemented in some instances by a business course or some instruction in domestic science)	19
Total	303

The points to be noted in the above are that the proportion of students who fully meet the highest requirement that has yet been made for admission in any training school, namely, high-school graduation, is not far below 50 per cent, but that of the remaining number over 25 per cent fall definitely below any suitable standards upon which a sound professional education can usually be built, and, further, that the degree of attainments presented by these students shows such wide and striking differences that the question at once arises, how is it possible to work out any uniform educational standards in nursing when handicapped at the very outset by the impossibility under present conditions of establishing and maintaining any uniformity in standards or requirements for admission. In any entering class of students in a training school of good standing will be found all the degrees and shades of educational preparation, such as are included in the reports of the seven New York schools, and still more clearly are they shown in the following statistics concerning the educational qualifications of students in the Johns Hopkins Hospital training school for nurses for a period of 16 years.

Educational qualifications of training school nurses in Johns Hopkins Hospital.

Years.	Common school.	High school and collegiate institute.	Private.	Convent.	Seminary.	College.	Normal.
1891	2	5	3	1	2	3	.....
1892	1	3	10	2	1	3	.....
1893	13	5	7	2	2	4	2
1894	.....	.....	.....	.....	.....	.....	.....
1895	7	11	7	1	1	4	3
1896	5	18	7	5	4	2	1
1897	1	7	5	1	3	4	.....
1898	.....	3	4	2	1	2	.....
1899	2	10	7	1	3	3	.....
1900	3	11	7	1	2	3	1
1901	2	9	6	1	1	4	2
1902	5	12	10	3	2	3	.....
1903	2	10	4	1	4	3	5
1904	2	9	7	2	1	6	4
1905	2	14	2	.....	5	8	.....
1906	3	9	1	1	5	12	4

Women whose actual formal education has not gone beyond the common school, and has ended at the age of 13 or 14 years, or who have had but one year of high school, or one or two years in private school or convent, enter training schools on identically the same terms as do women bringing a college degree. The students enter the same classes and take precisely the same courses; no recognition or credit is, as a rule, given the college woman for the higher qualifications she presents or for previous work done, yet curiously enough in the announcements of most training schools will be found the statement "women of superior education preferred."

From the reports of 692 training schools made in 1911 to the Bureau of Education, it appears that about 35 per cent of the total

number state a requirement of "high school or its equivalent;" about 23 per cent call for one year of high-school work (or an equivalent); 28 per cent call for nothing beyond the common school; the remaining 14 per cent either make no educational requirements whatever, and say so in unmistakable terms, or indicate merely a preference. It has been found that the equivalent of high-school work either of four years or one year must be interpreted with great liberality, so much so, in fact, that the former may be said to have little real significance in the majority of schools as a requirement for admission.

The large, best-equipped, and well-known schools naturally attract the most desirable candidates, yet not one of them is exempt from the necessity of admitting and keeping in the school pupils of pitifully low educational attainments and mental ability in order that there may be no disturbance or breakdown of the system which requires the hospital to be "manned" at all points throughout its departments with student nurses. In the smaller hospitals the situation is in the main much more difficult and pressing, and the principals of the larger training schools are not infrequently appealed to by their colleagues of the smaller to pass on to them candidates who have failed to measure up satisfactorily to the standards of the larger school.

The ultimate effect of the lowering of educational standards for admission to training schools is thus discussed by Miss L. L. Dock, honorary secretary of the International Council of Nurses. (A letter to hospital superintendents, by L. L. Dock. National Hospital Record, Jan. 15, 1909.)

The plea for laxity in preliminary educational standards, low entrance requirements for hospital training schools, and even for shorter terms of training, is often made with great skill of argument, and can be so presented as to sound extremely plausible, especially when present difficulties, graphically portrayed and emphatically dwelt upon, are placed well to the forefront of the statement.

Yet it is a singularly shortsighted plea—that of providing at all costs for the present without reflection as to the future. It is, indeed, an unstatesmanlike type of mind that can advocate a deliberate choice of lower, instead of higher, standards of education, because this kind of policy tends ultimately to self-destruction. It is like the pit that one digged and into which he himself fell.

Those who live in social settlements, where there are many opportunities to observe the curves of social tendencies, see daily evidences that the way for an inadequate and superficial education lies along the path of least resistance. No special pains are needed to induce people to be poorly educated; precisely the opposite, indeed, is the actual case. What with struggle for existence on the one hand and the weight of inertia on the other, those who will be standard bearers for worthy educational ideals and human progress must wage the most unremitting warfare that peace knows.

Our hospitals to-day employ in their services so large an army of young women that their indirect influence on common school education is very great indeed. If they will continue to demand applicants of good preliminary education, the whole cause of popular education will be materially strengthened; but if they should slip down to the basis of the primary grades, and be satisfied with that plane on which children of 14 are allowed to go into industry, they will deal a serious blow to education.

It can hardly be denied that the immediate effect of a ruling on the part of all hospitals to accept, in the near future, only those applicants who have had the equivalent of a high-school education, would be to stimulate a steady procession of girls into the high school; for, after all, even the most determined pessimist can not, as yet, show that the majority of the families from which nurses come are too poor to send their daughters to school, if there is a good and practical reason why they should go.

Nor, on the other hand, can the discouraging effects of a contrary step be denied, for the world is full of the proofs of inefficiency resulting from meager education, which, in turn, is directly traceable to low ideals.

It seems plain that here is an ethical obligation of the hospital to society of a very real nature and far-reaching extent, the more so as hospitals do not rank themselves among the "soulless" corporations that seek only material gains, but claim place among the forces that make for a higher civilization and an ampler distribution of the blessings of science. From the more selfish point of view, too, it would seem suicidal for hospitals to retrograde in educational ideals, for, as they are themselves entirely dependent upon an enlightened public for their support, they would help to cut off their own source of supply by helping to bring about a falling estimate of educational requirements. If, again, hospitals should generally accept a low standard, but other lines of occupation and skilled callings should steadfastly maintain high ones, then one of two things must result, both equally discreditable to the hospital, namely, either it must be permanently satisfied with the inferior grade of worker, with the accompanying loss of its own prestige, or it must reap the advantage made possible by the uncompromising high ideals of other callings, by which a generally good standard has been sustained; in other words, the hospital will reap where it has not sown—at the best, a shabby deed.

There was a time when hospitals were quite without influence in matters of general education. That was in the day of the untrained nurse or attendant, whom some of our reactionaries would like to bring back. Strange that in those days no one was satisfied, the public least of all. After all, as a country we believe in education; indeed, we stand for it. It is one of our corner stones. Is it, then, really respectable for men of any standing to maintain that the "equivalent" of the first high-school year is too much to exact of women who are to be intrusted with responsibilities of life and death? Should we not be ashamed to assert that a primary education is enough for hospital probationers, or that three years is too long a time for the training of a nurse, though it is not long enough for a complete knowledge of horticulture?

The thing of real importance is not that nurses should be taught less, but that all women should be taught more; not that courses of training for any serious work should be shortened, but better filled.

The arguments in behalf of lower standards are usually commercial arguments, and are, to persons familiar with the shibboleths and battle cries of the industrial struggle, ludicrously identical with those that are put forward in defense of forest and soil destruction, waste of natural resources, child labor, and other self-destructive policies. The correctness of this statement may be easily verified by the most casual reader.

The perennial widow who is compelled to depend on the wages of young and undersized boys, is the same piece of stage property as the excellent and competent nurse who possesses every known virtue but no education to speak of. One must ask why, as this excellent woman could not in any event be admitted to hospital probation until she is at least 19, should she not be encouraged to go to school until that time?

Long experience in the daily urgency of getting hospital work done, and the often unavoidable necessity of retaining probationers of elementary education, has but served to convince that it is more wholesome in the long run to hold a standard sufficiently high to act as a stimulus, even if one often consciously falls below it, than to be satisfied with one which is nothing more nor less than an indorsement of the status quo.

The present is urgent, but those in places of responsibility and authority have not the moral right to ignore the future.

AGE OF CANDIDATES.

Until the last few years the general age requirement for admission to training schools was 23 years, and it was only in exceptional instances that students were admitted under that age. But of recent years, in the effort to secure enough students to staff the hospital, this age requirement has been steadily lowered until now in the majority of schools (55.20 per cent) students are admitted at 20 years or under, and in 13.15 per cent of all schools they are admitted at 18 years of age. A further descent may be perhaps foreshadowed in the record of the two schools admitting that they receive students of 17 years of age. The age requirements in the various schools are as follows:

	Schools.
17 years	2
18 years	91
19 years	48
20 years	241
21 years	255
22 years	25
23 years	12
24 years	1
25 years	7
No definite age	10
Total	692

While there is little reason to suppose that the age standard could in the present day, be kept at 23 or even 22, yet it is a grave question whether the admission of young, immature girls of 18 and 19 to hospital wards, and to the heavy physical demands and the overwhelming responsibilities and anxieties of such work as inevitably awaits them there by day or by night, should be considered. No school dare assume that it will be able to provide influences and safeguards strong enough and far-reaching enough to protect either patient or pupil under those conditions.

There are undoubtedly a few schools in the country able to maintain suitable age standards, but the statements which have been made refer to the general situation and not to a few special instances.

CHARACTER OF WORK FOR STUDENTS.

There are certain measures which hospitals could adopt without any very great delay which would greatly relieve the present situation and check to some degree the constant flow into training schools, and thence into the community, of applicants who are fundamentally unfit for nursing, not only because of their limited general education and immaturity, but because of genuine defects in temperament, character, and habits. Hospitals, generally, could and should begin to accept the idea that a considerable proportion of actual nursing work must be paid for. Such official, executive positions as those of head nurse, supervisor (for day or night), and assistant should be filled not with students, but with graduate nurses carefully selected because of their fitness for the posts they are to occupy. They should be paid a proper salary, and provision should be made in

certain institutions in America, as has long been done in England, for an additional salaried body known as staff nurses. Beyond this, a sufficient number of employees should be provided to release the students from the performance of much of the common domestic service which pupil nurses are in nearly all hospitals daily performing. The students should of course be taught thoroughly how to do such work in order that they may know how to maintain proper surroundings and conditions for their patients, but it is a great waste of students' precious time to keep them for years repeating routine tasks of a purely domestic nature and of no educational value whatever. These suggested measures alone would substantially reduce the number of students now required to be admitted yearly, and would enable the schools to reject a considerably larger proportion of those falling below suitable standards.

HOURS OF WORK FOR STUDENTS.

The introduction of these measures, particularly that providing for a nursing staff independent of the student body, would also if properly carried out render important services to the training school in other ways. It would enable the school to shorten the hours of work for students, or, in the language of the hospital, "hours of duty." These long hours have always formed a persistent and at times an apparently immovable obstacle in efforts to improve the education of nurses and to establish a rational adjustment of practice to theory. A brief study of hours of work in 111 hospital training schools made by the writer in the year 1896 ("Working Hours in Training Schools," by M. A. Nutting, Report of American Society of Superintendents of Training Schools for Nurses, 1896, pp. 31–39) showed that at that time in very nearly two-thirds of these training schools throughout the country student nurses were on duty for 10 hours and over daily. The hours of night duty were found to be 12 hours in 70 per cent of the schools, and in the remainder they exceeded that number and ranged from 13 to 13¼. In no instance were these hours found to be under 12.

The entire course of training at that date was in all schools in this country two years or under (the one exception was the training school of the hospital of the University of Pennsylvania, at Philadelphia, which adopted the three-year course in 1904), a condition which should be considered in discussing the working hours of students. Ten or more hours a day in addition to class work and study might be endured for a period of two years without obvious or immediate injury to health. The same hours carried on for three years would prove a serious strain upon the student's physical resources, inflicting perhaps irreparable injury. The conclusions reached in this first study of working hours of students were that they were universally excessive,

that their requirement reacted injuriously not only upon the students, but eventually upon the patients and the hospital, that it was a short-sighted and unjustifiable economy in hospital administration which permitted it to exist. Fifteen years later, statistics show that though the course of training has now in the great majority of schools been lengthened to three years, shorter hours of work have not generally accompanied this change, and that progress in that direction has been slow and unsatisfactory. Nearly half (45.4 per cent) of the entire number of hospitals reporting on this subject still require a working day of 10 hours and over. The following statistics are from reports received recently by the Bureau of Education, and presented with them for comparison are statistics on the same subject in 1896.

Hours of duty in 1911 and 1896.

Hours of duty.	Schools in 1911.	Schools in 1896.
8	69	2
8½	43	0
9	239	11
9½	26	29
10	220	14
10½	0	32
11	22	3
11½	0	14
12	44	3
More than 12	0	3
Hours not given	29	.....
Total schools	[1] 692	[2] 111

[1] Percentage under 10 hours in 1911, 54.6.

[2] Percentage under 10 hours in 1896, 37.8.

In speaking of hours it must be remembered that these statistics refer only to practical work in ward, clinic, operating room, or other hospital department, and not to any portion of theoretical work; that the 10 hours in question are required of the student irrespective of lectures, class, or study. This practical work, also, is in many of its aspects unusually exacting and fatiguing; much of it is done while standing, bending, or lifting; much of it is done under pressure of time and nervous tension, and to a considerable degree the physical effort which the student must make is accompanied by mental anxiety and definite, often grave, responsibility. Viewed from any standpoint whatever, real nursing is difficult, exacting work, done under abnormal conditions, and all the extraordinary, subtile, intangible rewards and satisfactions which are bound up in it for the worker can not alter that fact.

Ten hours, or even nine hours, of work daily of this nature can not satisfactorily be combined with theoretical instruction to form a workable educational scheme. It is futile, and it should frankly be so conceded, to offer instruction to students who are unable through fatigue to make the required mental effort, who can not, if they would,

bring freshness, enthusiasm, or even intelligent interest to the subjects presented. The attention of tired students may be held by an exceptionally able lecturer for brief periods, but sustained work is out of the question. The student under these conditions not only loses the valuable knowledge which should illuminate every step of her work, but is liable through fatigue to misunderstand or misinterpret the instruction designed to afford her a safe basis upon which to build correct practical procedures. The direct effect of this is an immediate loss to the student; the indirect effect is a steady loss of interest in that part of her work which she can not by any possible effort find time and strength to handle satisfactorily. The importance of the practical side of her work is highly emphasized, that of the theory is minimized and belittled. It is not surprising that student nurses in training schools should eventually grow to exalt the practical above everything. It is the logical and inevitable result of the daily lessons taught them of the relative importance of the two factors in their education. Another aspect of these long hours, and one of extreme importance, is their bearing upon the health of student nurses.

Included in the special questionnaire on hours of work were questions on the average number of days of illness per student, the nature and causes of such illnesses. The replies received did not lend themselves readily to ordinary methods of tabulation, but as far as could be gathered the illnesses of students were due to one or more of the following causes: Overcrowded wards, overcrowded and unsanitary nurses' homes, overwork due to shortage of pupils, fatigue, exposure, overheating, poor food, not enough outdoor life, too little play, epidemics—these all figured as being in some measure contributory to the illnesses of students recorded in the various institutions. Of interest was the statement made in one reply that improved accommodations for more nurses brought down the number of pupils off duty on account of illness.

That long hours of ward work are, however, in most hospitals in the last analysis the main factor in causing, directly or indirectly, sooner or later, a heavy percentage of illness, those familiar with hospital life and its demands will not be disposed to doubt, and lowering the age of admission to schools becomes in its relation to prevailing hours of work a matter of the utmost importance. Dr. Frederic Lee, whose studies of fatigue in its relation to health are authoritative, makes the point that the fatigue resulting from long hours is far more serious in its effects upon such younger candidates as are now entering our schools—of such ages, for instance, as 18, 19, and 20—than upon the older student of former years. The shorter day, therefore, is seen to be important from the standpoint of the younger student, as well as from the effects of the longer (three years') course of training.

How largely the superintendents of training schools feel the need of improvement in this direction may be gathered from the fact that over two-thirds of the replies to the questions on this subject suggested shorter hours as advisable or necessary, that a large proportion of these stated their firm belief in an 8-hour day, and that almost every reply which came showed clearly in one way or another the difficulties under which the schools were laboring in trying to carry on the hospital work with the existing number of students. Many replies expressed outright the urgent need of more nurses, and one stated frankly that in order to adhere to a proper system of hours, and not make them dependent on hospital conditions, she would require a 20 per cent increase in the number of students—which she was quite unable to secure.

An interesting reply from a school where, as nearly as could be discovered, the working hours were 11 was to the effect that these hours were very satisfactory, and that the patients disliked a change of nurse even from day to night. Another stated "12 hours are not too many if there is plenty of good, nourishing food."

LENGTH OF ACADEMIC YEAR.

In considering this whole question of time and hours, it must not be forgotten that, as compared with other professional schools or with colleges, the training-school year is unprecedentedly long. It covers, in the majority of schools, 50 weeks each year, in which there are no Christmas, Easter, or Thanksgiving holidays and rarely a whole free Sunday. The annual vacation period is generally two weeks in length and although there are some schools allowing three weeks or even one month, there are others allowing but 10 days of vacation annually. In all schools it is customary to require the student to make up to the hospital every day or half day lost by illness or absence. Contrast the 50 weeks of the training school year with the 32 or 36 weeks of the academic year in the college or professional school. It is the rare instance in which the year in either of these institutions extends to 38 or 40 weeks. In point of actual time, therefore, the course of training in the majority of schools, which covers three years, as the accompanying table shows, is equivalent to four full academic years.

Length of period of training.

Number of years in course—	Number of schools
4	1
3½	2
3	56
2½	1
2	10
No data	
	69

[1] The Waltham School, Waltham, Mass. [2] The Presbyterian School, Chicago, Ill.

In connection with so long a course of training, long hours of work take on a new significance. They seem an intolerable offense against the principles for which the hospital and training school are standing in modern society, the principles upon which efforts are based to preserve and protect health and to advance knowledge concerning them.

The late Mrs. Hunter Robb, the first principal of the training school in the Johns Hopkins Hospital, Baltimore, and an authority on nursing education, pointed out in the very beginning the dangers of adopting the three years' (calendar years) course unless with it came shorter hours, and she insisted that superintendents of nurses ought to hold to the two years, and not consider adding to them, unless they were prepared to limit the day's work of practical nursing to eight hours. In an address on this subject written in 1895, and read at a meeting of superintendents of training schools, she said (Transactions of the American Society of Superintendents of Training Schools for Nurses, 1895, p. 36):

> I am sure that many of you have had some qualms of conscience at the way in which we are sometimes forced, I might almost say, to drive our pupil nurses through a two years' course. I assure you that I have had myself many anxious moments for the future of certain of my pupils as regards their health. It is well known that a combination of physical and mental labor is more exhausting than simple manual or simple mental occupation. It is true that for a time such a strain can be borne without producing any permanent injurious effects, and it is possible in most cases for women, to stand the strain imposed upon them for two years, although I am afraid that not all of them come out of the trial unscathed. If, however, this high pressure is to be kept up for three years, I am sure that the health of the nurses will suffer. A woman who works physically over eight hours a day is in no mental condition to profit to any extent by class instruction or lectures. I maintain, therefore, that the three years' course must not be considered at all unless the hours of practical work are shortened, but if the two changes can be made together, then the preservation of the health of the nurse and the extension of her education and training will be insured. This again will result in an increase in her competency and consequently will be productive of greater benefits to the patients who come under her care during her training, and after she has graduated.

Whatever changes may arise in the future in the system of educating nurses, this question of shorter hours certainly is a matter of immediate, paramount importance, and perhaps no one aspect of training-school work has greater influence upon prospective candidates than this one of the long hospital hours.

NEED OF VITAL STATISTICS.

It is felt by some of those who have been identified for many years with hospitals and training schools, that there is need for carefully secured vital statistics which shall supply exact information, not only as to the relative effect of two against three years of rigid hospital training, or the 8, 9, or 10 hour day, the conditions

under which the students live and work, the number of physical and nervous breakdowns during the ordinary course of training, but which shall carry its investigations out into the nurse's professional life and work, in an attempt to discover the length of the working life of the average nurse in various professional fields of activity—private nursing, hospital work, district work, tuberculosis work especially, and other phases of work in which nurses are now engaged in numbers. It is important to have some accurate data as to the amount, for instance, of tuberculosis which develops in nurses after they leave the training schools, and at what period; and now that the idea of requiring a careful physical examination of all students is gaining favor in schools of the highest standing, as a measure of protection both to the student, hospital, and school, it should be comparatively easy to secure such vital statistics.

THE CURRICULUM.

The general plan of work in all training schools has the merit of extreme simplicity. The accepted candidates are admitted at certain periods of the year in numbers in accordance with the needs of the hospital. In some schools it is customary to admit groups of students twice yearly, in the spring and in the autumn; in others they are admitted every three or four months; and still others admit when a vacancy occurs in the school or some special need arises in the hospital. It has been the universal custom to place these students, called "probationers," on duty in the hospital wards immediately on arrival, to confine them for the first few days to the simpler tasks in caring for the surroundings of patients, and to advance them shortly to minor duties in the actual care of patients. A certain proportion of these students thus on probation fail to pass the required tests, and retire or are dropped. The successful ones are placed in uniform, becoming the junior students on the staff, and from this point on they are pushed forward with considerable rapidity into the more difficult and important tasks and into increasing responsibility. It is naturally essential that they should be ready to render efficient service to the hospital at the earliest possible date. Some idea of the the rapidity with which this process of development goes on may be gathered from the fact that it is customary to place this young student on night duty (i. e., the sole charge of a ward of patients) at a comparatively early stage of her training, and it is expected that those who have been training her will have prepared her for this stage of her work, which may come at any time after the fourth month. Formerly it was a common custom to place student nurses on night duty at the end of the third and sometimes even of the second month. There has been great improvement in this matter of recent years,

and now many of the better type of schools postpone this trying experience until the sixth month or later.

In thus hastening the practical progress of the student for practical purposes it has been necessary to set her at many tasks without any adequate instruction to prepare her for them. She has been doing certain work long before acquiring knowledge of the fundamental sciences or the principles upon which that work is based. The few hours devoted to theory, usually not more than two a week, have made the rate of progress in that part of her education exceedingly slow, and the fatigue resulting from 9 to 10 hours of work daily have made it difficult for her to profit by the instruction offered.

PRELIMINARY COURSES.

With the view of improving this feature of training-school work and introducing better methods, brief preliminary courses were established in 1903 in two training schools in Great Britain, the schools of the Royal Infirmary at Glasgow and of the London Hospital at London. This attempt to give the student some slight preparation in theory and elementary nursing procedures proved highly satisfactory, and at a little later date the same plan was tried in this country in a somewhat larger way. In the report on this subject published by the Bureau of Education in 1905, statistics were given of 43 training schools in different parts of the country in which these preliminary courses had been established. The development in this direction was recognized as marking an important and interesting advance in training-school work, and the progress made in the brief period following its introduction into a representative school of nursing, in 1901 (the Johns Hopkins Hospital training school, at Baltimore), had been so surprisingly rapid as to afford great encouragement to those who had urged it as an improvement in educational methods.

The course as originally outlined here covered a period of six months, and provided instruction in the fundamental sciences which underlie the art of nursing, such as anatomy and physiology, bacteriology and chemistry, materia medica, hygiene, dietetics (with laboratory work in cookery), housewifery, sterilization and disinfection, and the elementary principles and procedures in nursing. It was realized that a few months spent in preparation of this nature would enable the student to enter the ward and begin the practical care of patients and the study of disease under conditions favorable alike to educational growth and to the safety and welfare of her patients. Instead of being the unskillful performer of successive acts the meaning and purpose of which she was frequently entirely unable to comprehend, the student could approach her practical work prepared in some small degree, at least, to profit immediately by the opportunities

afforded, and to avoid the errors, the losses through ignorance and ill directed effort, and the period of distressing mental confusion through which almost all conscientious student nurses passed when trained under the older system, which placed them at a very early stage of their training at the bedside of the patient, entirely unprepared and unfortified. The general principles underlying this new plan of work are recognized as sound. They are approved by the Education Department of the State of New York, which says:

> Schools of nursing to be registered by the regents must be prepared to provide the following opportunities for their pupils: A preliminary course of instruction and probation of not less than four months, during which term the pupils receive the theoretical and practical instruction necessary before undertaking any actual nursing in the wards. (Education Department Bulletin, Albany, N. Y., July, 1911, p. 6.)

A further impetus toward the development of preliminary work was given by the training-school committee of the American Hospital Association, which in its recent report (the International Hospital Record, Sept. 15, 1909, p. 8) insisted "that a preliminary course of study of not less than three months' duration be given to each class."

Teachers College, Columbia University, New York, has offered for two years opportunity for special work in the preliminary sciences leading to nursing. Some of the subjects studied are anatomy and physiology, bacteriology, chemistry, hygiene, household economics, dietetics, cookery, home nursing and emergencies, care of children, and some work in the history and ethics of nursing and nursing sociology.

This course as outlined takes eight months, students who have carried the work satisfactorily being admitted on advanced standing to an approved training school for nurses. Bellevue, Mount Sinai, Presbyterian, and St. Luke's Hospitals, New York, and the Johns Hopkins Hospital, Baltimore, have agreed to deduct 6 to 9 months from their regular course in recognition of such preparation. Applicants must be high-school graduates, and must of course meet the requirements of the training school as to age, health, and general fitness before being admitted as pupil nurses.

In England the course, usually but six weeks in length, has been established in a good many prominent schools, and it is worthy of note that it has been recently introduced into the oldest regular training school in existence, that established by Florence Nightingale in 1860 at St. Thomas' Hospital, London. From statistics gathered through a special study on this subject made in 1911 by the committee on education of the American Society of Superintendents of Training Schools (see Annual Report of this Society for 1911), it was found that 86 schools have now established such preliminary courses, varying in length as the following table shows:

Length of preparatory course:	Schools.
1 college year	[1] 1
6 months	11
4 months	7
3 months	34
2 months	23
6 weeks or under	10
Total	86

[1] The University of North Dakota.

Preparatory courses reported in training schools in June, 1911.[1]

	Location.	Hospital.	Number of beds.	Number of pupils.	When established.	Included in 3 years?	Subjects taught.						
							Anatomy and physiology.	Bacteriology.	Chemistry.	Hygiene.	Dietetics and cookery.	Materia medica.	Elementary practical nursing.
	School offering preparatory course of one year.												
1	University, N. Dak.	University of North Dakota.	.....	.....	1910	Yes.	×	×	×	×	×	×	×
	Schools offering a six months' preparatory course.												
2	Baltimore, Md.	Johns Hopkins.	360	145	1901	Yes.	×	×	....	×	×	×	×
3	Chicago, Ill.	Presbyterian.	200	110	1903	No.	×	×	×	×	×	×	×
4	Cleveland, Ohio.	Lakeside.	260	91	1903	Yes.	×	×	....	×	×	×	×
5	Dallas, Tex.	Texas Baptist Memorial.	135	45	1910	.....	×	×	....	×	×	×	×
6	Detroit, Mich.	Harper.	220	85	1902	Yes.	×	×	....	×	×	×	×
7	Minneapolis, Minn.	Northwestern.	75	31	1904	Yes.	....	....	....	....	×	×	×
8	.....do.	University.	52	16	1909	Yes.	×	×	×	×	×	×	×
9	New York, N. Y.	Presbyterian.	233	100	1904	Yes.	×	×	....	....	×	....	....
10	.....do.	St. Luke's.	300	106	1902	Yes.	×	×	....	×	×	×	×
11	Philadelphia, Pa.	Polyclinic.	100	30	1903?	Yes.	×	×	....	×	....	....	×
12	Pittsburgh, Pa.	Allegheny General	316	73	1909	Yes.	×	×	....	×	×	×	×
	Schools offering a four months' preparatory course.												
13	Boston, Mass.	Children's.	100	45	1904	Yes.	×	×	×	×	×	×	×
14	Chicago, Ill.	Mercy.	250	106	1908	Yes.	×	....	×	....	....	×	×
15	.....do.	St. Luke's.	315	120	1907	Yes.	×	×	....	×	×	×	×
16	Norfolk, Va.	Norfolk Protestant	140	39	1907	Yes.	×	....	....	×	×	×	×
17	Taunton, Mass.	Taunton.	20	12	1910	Yes.	×	×	....	×	....	×	×
18	Toronto, Ont.	Hospital for Sick Children.	150	55	1905	Yes.	×	×	....	×	×	×	×
19	Worcester, Mass.	Worcester City.	295	100	1905	Yes.	×	×	×	×	×	×	×
	Schools offering a three months' preparatory course.												
20	Bangor, Me.	Eastern Maine General.	100	35	1909	Yes.	....	....	....	....	....	....	....
21	Boston, Mass.	Massachusetts General.	310	140	.....	Yes.	×	×	....	×	×	×	×
22	.....do.	Massachusetts Homeopathic.	300	100	1906	Yes.	×	×	×	×	....	....	×
23	Bridgeport, Conn.	Bridgeport.	112	46	.....	Yes.	×	×	....	×	....	....	×
24	Charlottesville, Va.	University of Virginia.	110	30	1908	Yes.	×	....	....	×	×	....	×
25	Chicago, Ill.	Cook County.	1,800	180	1904	Yes.	×	×	....	×	×	×	×
26	.....do.	Michael Reese.	350	.....	.....	Yes.	×	×	....	×	×	×	×
27	Cincinnati, Ohio.	Christ.	120	53	1903	Yes.	....	....	....	....	×	×	×
28	.....do.	Jewish.	125	30	1908	Yes.	×	×	....	×	×	×	×
29	Dayton, Ohio.	Miami Valley.	150	45	1906	Yes.	×	×	....	×	×	....	×
30	Detroit, Mich.	Grace.	150	65	1908	Yes.	....	×	×	×	×	....	×
31	Fall River, Mass.	Union.	80	29	1908	Yes.	×	×	....	×	×	×	×
32	Indianapolis.	Methodist Episcopal.	70	40	1911	Yes.	×	×	....	....	×	×	×
33	Lewiston, Me.	Central Maine General.	70	33	.....	Yes.	....	×	....	×	×	×	×
34	London, Ont.	Victoria.	300	84	1906	Yes.	×	×	....	×	....	×	×
35	Muskegon, Mich.	Hackley.	40	20	1907	Yes.	×	×	....	×	×	×	×
36	New Haven, Conn.	Connecticut.	225	70	1905	Yes.	....	×	....	×	×	×	×
37	Newport, R. I.	Newport.	100	33	1908	Yes.	....	×	....	×	×	....	×
38	Newton, Mass.	Newton.	100	65	1907	Yes.	×	....	....	....	×	....	×

[1] Ten additional schools report a short course of six weeks or under of preparatory work.

Preparatory courses reported in training schools in June, 1911.

Hours of theory, daily.	Practical work, hours daily.	Practical work, where done.								Tuition charged.	Uniforms supplied by—	Textbooks supplied by—	Additional assistants or instructors required.	Affiliation with college or technical school.	
		Demonstration room.	Wards.	Dispensary or clinic.	Diet kitchen.	Pharmacy.	Supply room.	Linen and sewing room.	Laundry.						
5	0	....	....	....	....	....	....	....	....	$25	.....	.....	Yes.	No.....	1
2	6	....	....	....	×	×	×	....	....	50	Stu.	Hosp.	2	No.....	2
1-4	6	....	....	×	×	×	×	....	....	25	Stu.	Stu.	1	Rush Medical College.	3
2	7	....	×	....	×	....	×	....	....	25	Hosp.	Hosp.	1	No.....	4
1½	10	....	×	....	×	....	×	....	....	0	Hosp.	Hosp.	.....	Baylor Medical College.	5
2	6	....	×	....	×	....	×	....	....	0	Stu.	Stu.	1	No.....	6
2½	6½	....	×	....	×	....	×	....	....	0	Stu.	Stu.	1	No.	7
{[2] 2	[2] 6	....	×	....	....	....	....	×	×	25	Hosp.	.....	.....	University of Minnesota.	8
6½	2	....	×	....	×	....	×	....	....	0	Hosp.	Hosp.	2½	No.....	9
3	5	....	×	....	×	....	....	....	....	0	Stu.	Hosp.	1	Teachers College.....	10
3	5	....	×	....	....	....	×	....	....	0	Stu.	Hosp.	1	No.....	11
1½	6	....	×	....	×	....	×	....	....	0	Stu.	Stu.	1	No.....	12
8-9	0	....	....	....	....	....	....	....	....	200	Stu.	Stu.	.....	Simmons College.....	13
2-3	6	×	×	....	×	....	×	....	....	0	Stu.	Stu.	1	Northwestern University.	14
2	5½	....	×	[3]	....	....	....	....	....	0	Hosp.	Hosp.	2	No.....	15
		....	×	....	....	....	....	....	....	0	.....	.....	1	No.....	16
2	5	....	×	....	....	....	×	....	....	0	Hosp.	Hosp.	No.	No.....	17
4	4	....	×	....	×	×	×	....	....	0	Stu.	Hosp.	2	No.....	18
2	7	....	×	....	×	....	....	....	....	0	Hosp. in part.	.....	1	No.....	19
1-2	10	....	×	[3]	....	....	....	....	....	0	Stu.	Stu.	Yes.	No.....	20
1-2	4-5	....	×	....	×	....	....	....	....	0	Stu.	Stu.	No.	No.....	21
2	7	....	×	....	....	....	....	....	....	.....	Stu.	Stu.	3	No.....	22
1	10	....	×	....	....	....	×	....	....	0	Stu.	Stu.	4	No.....	23
1	6	....	×	....	×	....	×	....	....	0	Stu.	Hosp.	1	No.....	24
.....	.....	....	×	....	×	....	....	....	....	0	Hosp.	Stu.	2	No.....	25
2	8	....	×	....	×	....	×	×	....	0	Stu.	Stu.	Yes.	No.....	26
2	8	....	×	....	×	×	×	....	....	0	Stu.	Stu.	2	No.....	27
5	5	....	No.	....	×	×	×	....	....	0	Hosp.	Hosp.	3	No.....	28
4	5	....	×	....	....	....	....	....	....	0	Stu.	Stu.	1	No.....	29
1	8	....	×	....	×	×	×	....	....	0	Hosp.	Hosp.	No.	No.....	30
1½	7	×	×	....	×	....	....	....	....	0	Stu.	Stu.	No.	No.....	31
2	10	....	×	....	×	....	....	....	....	0	Stu.	.....	1	No.....	32
1	8	....	×	....	....	....	....	....	....	0	Stu.	Stu.	No.	No.....	33
1½	7	....	×	×	....	×	×	....	....	0	Stu.	Stu.	1	No.....	34
.....	.....	....	×	....	×	....	....	....	....	0	Hosp.	Hosp. 1st yr.	1	Hackley Manual Training School.	35
1	1	....	×	....	....	....	....	....	....	0	Hosp.	Stu.	1	No.....	36
2½	8	....	×	....	×	....	×	....	....	0	Stu.	Stu.	.....	No.....	37
[4] 8	7	....	×	....	....	....	×	....	....	0	Stu.	Stu.	.....	No.....	38

[2] In Homeopathic Hospital. [3] In different departments. [4] Approximately.

Preparatory courses reported in training schools in June, 1911—Continued.

	Location.	Hospital.	Number of beds.	Number of pupils.	When established.	Included in 3 years?	Subjects taught.						
							Anatomy and physiology.	Bacteriology.	Chemistry.	Hygiene.	Dietetics and cookery.	Materia medica.	Elementary practical nursing.
	Schools offering a three months' preparatory course—Continued.												
39	New York	Mount Sinai	500	170	1906	Yes.	×	×	....	×	×	×	×
40	....do	New York Infirmary for Women and Children.	119	23	1906?	Yes.	....	×	....	....	....	....	×
41	Pittsburgh, Pa	South Side	135	30	1905	Yes.	×	×	....	×	....	×	×
42	Providence, R. I	Rhode Island	400	160	1906	Yes.	×	×	....	×	×	×	×
43	Pueblo, Colo	Minnequa	150	28	....	Yes.	....	....	....	....	....	×	×
44	New York, N. Y	Bellevue	1,223	111	1910	Yes.	×	×	....	×	×	....	×
45	Quebec, Quebec	Jeffery Hale's	50	27	1909	Yes.	×	×	....	×	×	....	×
46	Rochester, N. Y	Rochester General	110	56	1906	Yes.	....	×	....	....	....	×	×
47	St. Louis, Mo	Washington University.	200	45	1910	Yes.	×	×	....	×	×	×	×
48	St. Paul, Minn	St. Luke's	100	44	1910	Yes.	×	×	....	×	×	×	×
49	San Francisco, Cal	Lane	175	70	1905	Yes.	×	....	....	×	×	×	×
50	Topeka, Kans	Christ's	85	35	1908	Yes.	×	×	×	×	....	×	×
51	Toronto, Ont	Toronto General	400	115	1911	Yes.	×	×	....	×	....	×	×
52	Wauwatosa, Wis	Milwaukee County	250	30	1911	No.	×	×	....	×	....	....	×
53	Westfield, Mass	Noble	55	13	1911	Yes.	×	×	....	×	×	....	×
	Schools offering a two months' preparatory course.												
54	Akron, Ohio	City	80	25	1908	Yes.	×	×	×	×	×	×	×
55	Ann Arbor, Mich	University	300	70	1911	Yes.	×	....	....	....	....	....	×
56	Brooklyn, N. Y	Brooklyn	196	44	1906	Yes.	....	×	×	×	....	×	×
57	....do	St. Mary's	250	60	1906	Yes.	×	....	....	×	×	×	×
58	Buffalo, N. Y	Buffalo Homeopathic.	40	18	1910	Yes.	×	×	....	×	×	×	×
59	....do	Erie County	450	47	1906	Yes.	....	....	....	....	×	....	×
60	Camden, N. J	Cooper	100	35	1911	Yes.	....	×	....	×	....	×	×
61	Canandaigua, N. Y	F. F. Thompson	50	15	....	....	×	×	....	×	×	×	×
62	Chicago, Ill	Augustana	200	88	1906	(1)	....	....	....	....	....	....	×
63	Jamaica Plains, Mass	Adams Nervine	50	19	1905	Yes.	×	....	....	×	×	....	×
64	Kingston	Kingston General	100	35	....	Yes.	×	....	....	×	....	....	×
65	Louisville, Ky	John N. Norton Memorial.	100	36	1908	Yes.	....	....	....	×	×	....	×
66	Minneapolis, Minn	Asbury and Rebecca Methodist Episcopal Hospital and Home.	105	42	....	Yes.	×	....	....	×	×	....	×
67	....do	City	250	46	....	Yes.	×	....	....	....	....	....	×
68	New York, N. Y	City and Maternity and Gouverneur.	900	100	1902	No.	×	....	....	×	×	×	×
69	....do	New York	225	94	1904	No.	×	....	....	....	×	....	×
70	Omaha, Nebr	Nebraska Methodist Episcopal.	100	45	1909	Yes.	×	×	....	×	....	×	×
71	Poughkeepsie, N. Y	Vassar Bros	65	22	1910	Yes.	×	×	....	×	....	×	×
72	Philadelphia, Pa	Jewish	150	55	1909	Yes.	....	....	....	....	....	×	×
73	....do	Pennsylvania	315	72	....	Yes.	....	×	....	×	....	....	×
74	Quincy, Ill	Blessing	30	20	1905	Yes.	....	....	....	×	....	×	×
75	Saginaw, Mich	Saginaw General	50	20	....	Yes.	×	....	....	×	×	×	×
76	Springfield, Mass	Springfield	100	43	1909	Yes.	....	×	....	×	×	....	×

[1] Approximately.

Preparatory courses reported in training schools in June, 1911—Continued.

Hours of theory, daily.	Practical work, hours daily.	Practical work, where done.								Tuition charged.	Uniforms supplied by—	Textbooks supplied by—	Additional assistants or instructors required.	Affiliation with college or technical school.	
		Demonstration room.	Wards.	Dispensary or clinic.	Diet kitchen.	Pharmacy.	Supply room.	Linen and sewing room.	Laundry.						
1	7	....	....	....	×	×	×	....	....	0	.....	.....	1	No.....	39
½	8½	×	×	....	×	....	....	....	....	0	Stu.	Stu.	1	No.....	40
1	9	....	×	....	....	....	....	....	....	0	Stu.	Stu.	1	No.....	41
2	8	....	×	....	×	....	....	....	....	0	Stu.	Stu.	1	No.....	42
1	8	....	×	....	....	....	....	....	....	0	Stu.	Hosp.	No.	No.....	43
½	6	....	×	....	×	....	....	....	....	0	Stu.	Stu.	5	.....	44
1	1	....	×	....	....	....	....	....	....	0	Stu.	Stu.	No.	No.....	45
½	5	×	×	....	....	....	×	....	....	0	Stu.	Stu.	1½	No.....	46
2	8	....	×	....	×	×	....	....	....	0	Hosp.	Hosp.	1	No.....	47
1	8	....	×	....	×	....	×	....	....	0	Stu.	Hosp.	No.	No.....	48
1	8	....	×	....	×	....	×	....	....	0	Stu.	Stu.	2	Cooper Medical College.	49
3	6	....	×	....	×	....	×	....	....	0	Hosp.	Partly Hosp.	1	No.....	50
3	5½	....	×	....	×	....	×	....	....	0	Hosp.	Hosp.	1	No.....	51
1	2	....	×	....	×	....	×	....	....	0	Stu.	Stu.	1	No.....	52
2	3	....	....	....	×	×	×	....	....	0	Stu.	Stu.	No.	State Normal.....	53
2	6	....	×	....	×	....	×	....	....	0	Stu.	Stu.	1	No.....	54
3	10	....	×	....	×	....	×	....	....	0	Stu.	Stu.	.....	University of Michigan.	55
1	[1] 1½	....	×	....	....	....	....	....	....	0	Stu.	Stu.	1	No.....	56
1	6	....	×	....	....	....	....	....	....	0	Hosp.	Hosp.	2	No.....	57
3	4	....	×	....	....	....	×	....	....	0	Hosp.	Hosp.	No.	No.....	58
2	6	×	×	....	×	....	....	....	....	0	Stu.	Stu.	2	No.....	59
2	8	....	×	....	....	....	....	....	....	0	Stu.	Stu.	1	No.....	60
3½	4½	....	×	....	×	....	×	....	....	0	Stu.	Stu.	1	No.....	61
2	4	....	×	....	....	....	×	....	....	0	Stu.	Stu.	No.	No.....	62
1	10	....	×	....	....	....	....	....	....	0	Stu.	Stu.	No.	No.....	63
1	9	....	×	....	....	....	....	....	....	0	Stu.	Stu.	1	No.....	64
3	5	....	×	....	×	....	....	....	....	0	Stu.	Hosp.	1	No.....	65
1	8	....	×	....	×	....	....	×	....	0	Stu.	Stu.	1	No.....	66
2	8	....	×	....	....	....	....	....	....	0	Stu.	Stu.	No.	Yes.....	67
[2] 2½	2½	....	×	....	....	....	....	....	....	0	Stu.	Hosp.	No.	No.....	68
1	7	....	×	....	....	....	....	....	....	0	Stu.	Stu.	1	No.....	69
1	6	....	×	....	×	....	....	....	....	0	Hosp.	Hosp.	1	No.....	70
1	8	....	×	....	×	....	×	....	....	0	Stu.	Stu.	No.	No.....	71
1	7	....	×	....	×	....	×	....	....	0	Stu.	Stu.	No.	No.....	72
1	2	×	×	....	....	....	×	....	....	0	Stu.	Stu.	No.	No.....	73
1	7	....	×	....	....	....	....	....	....	0	Stu.	Stu.	No.	No.....	74
.....	12	....	×	....	....	....	....	....	....	0	Hosp.	Stu.	2	No.....	75
2	7	....	×	....	....	....	×	....	....	0	Stu.	Stu.	No.	No.....	76

[2] One month additional.

TIME GIVEN TO SUBJECTS OF STUDY.

In nine schools the preparatory course was established during the last year. The idea for which it stands finds ready acceptance in the minds of both training school and hospital workers, and to the laity it seems an essential measure for safeguarding the patient. In actual operation, however, practical difficulties appear. Increased accommodation for students is required; special instruction and supervision are essential features of the plan. Beyond this, when the demands of the hospital press, as they will, and the services of even the unskilled probationer are of value, it is well-nigh impossible to maintain any scheme of instruction uninfluenced by hospital requirements. Such conditions have operated to reduce the preliminary course from the six months of the original plan to the three months which is now the usual preliminary period, and to further impair its purpose by placing the student at the very beginning of the course in the hospital wards for several hours daily. A very small number out of the 86 schools offering preliminary courses are able, apparently, to keep their students out of the hospital service for the entire or even a major part of the brief course, and the hours of ward work are now in instances so long as to leave hardly any time for that study of the sciences and other fundamental subjects for which the preparatory course was established. With the concentration into a few months of the theory which was originally scattered through at least the entire first year, the student is of necessity required to give several hours daily to study. If this need is not recognized, and the student is called upon for eight or even seven hours of practical work daily in wards or anywhere else, she is in a worse plight than under the old system.

To derive full benefit from this all too brief opportunity for preparation, the student should of course, be permitted to give her entire time and energy to it, but where at present this is not feasible the maximum amount of hospital work required of her daily should not exceed four hours. It appears from the statistics that about 40 per cent of the 86 schools require during the preliminary course seven or more hours of hospital work daily. The introduction of these preliminary courses has formed the first steps in bringing about a proper grading of the various subjects in the curriculum. It has brought into proper place and orderly relationship such fundamental subjects as anatomy, physiology, bacteriology, hygiene, dietetics, materia medica, which formerly were scattered in a haphazard way throughout the entire course. These subjects now form an important part of the curriculum in almost all schools, and it is evident from a study of nearly 500 reports that a considerable degree of uniformity in subjects has been reached. There is, however, a striking lack of uniformity in the length of time devoted in the different schools to

these subjects. According to the records, the time allotted to the various subjects of the first year range about as follows:

Subject.	Number of hours.
Anatomy	8–72
Physiology	6–60
Bacteriology	2–40
Hygiene	2–24
Dietetics	5–40
Materia medica	10–60

In respect to all these subjects several instances were found in which the number of hours either fell below or exceeded those here recorded, but the record may be accepted as indicating the general situation and showing clearly the wide divergence of views held in training schools as to the ground which should be covered in these fundamental and essential subjects.

In anatomy and in physiology from 20 to 24 hours seems to be the usual time required in the larger number of schools, but it is noted that 40, 50, and even 60 hours are not uncommon.

In bacteriology, the majority of schools do not require more than 10 hours of work, many of these actually stating the requirement to be from 2 to 5 hours. In view of the extreme importance of this subject in the education of the nurse, as one of the very pillars upon which much of her training must rest, that school must come under criticism which fails to provide adequate work in this subject. Students of domestic science are usually required to cover one full half-year in bacteriology, chiefly of laboratory work in which the time occupied is usually not less than 60 hours. Prof. Moore, of Cornell University, believes that bacteriology plays such an "important part in the immediate physical well-being of every individual" that it should be "introduced into the common schools." (Bacteriology in General Education, Science, February 24, 1911, p. 280.)

It is noticeable in the reports how much more time is allotted in many schools to materia medica than to dietetics. This may perhaps be due to a lack of appreciation of the true relative importance of the two subjects, or to the fact that instruction in materia medica can usually be rather easily obtained without additional expense from some member of the staff, whereas instruction in dietetics calls for a specially trained teacher, who must be paid for her work. Far too little attention is given this important subject in training schools; the courses offered are brief; the work is elementary in character. There should be more work in food properties and values, in nutrition, and food preparation.

The nurse is required to be something of an expert in this province, to be able to work out satisfactory dietaries on certain general lines

laid down by the physician, not only during illness, but in convalescence, during infancy and childhood, and in those special conditions where the diet is the treatment. She should be able also to plan nourishing dietaries and advise as to healthful food in families where sickness is combined with poverty and economic difficulties must be surmounted.

But this more thorough work in foods should be preceded by at least an elementary course in chemistry, and this is equally needed as a basis for any satisfactory work in hygiene and sanitation or in materia medica. In some of the training schools connected with universities, it is noted that courses in chemistry are given, but these are few in number.

In all the subjects which have just been discussed, it is important that more uniformity in standards should be reached, and steady work in this direction is urgently needed.

In arrangement and grading of subjects, a somewhat curious situation appears—the first year includes, apparently, a considerably larger amount of instruction than either of the other two years. Theoretical work appears to diminish appreciably with each year, and there are schools (32 were found in the reports) in which apparently no instruction whatever is offered in the third year. Instead, therefore, of a course so arranged that the student progresses from year to year in theoretical knowledge as well as in practical experience, there is offered a course which, so far as intellectual effort is concerned, decreases instead of increases in its demands upon the student. This naturally might lead one to ask why a third year is necessary and gives color to the suggestion frequently made, that the third year is established more for the benefit of the hospital than for the student.

INSTRUCTORS.

In 315 schools (nearly half the entire number from which reports were received) there are no paid instructors. On this subject, for the remaining schools, it is difficult to present any accurate and serviceable information, since the returns show such a misconception of the data asked for as to render the results unsuitable for use. In the majority of instances the officers of instruction and supervision were evidently identical, and frequently this was stated to be the case. The salaried instructor is a new feature in a training-school work, and apart from teachers of dietetics and massage there are very few schools, probably not more than 10 in the whole country, which have any one officer whose time is devoted wholly to teaching. The conclusions reached from the reports on this subject were that teaching in training schools is now conducted almost entirely by administrative and executive officers, such as the superintendent or assistant superintendent of nursing, with the cooperation of the

visiting staff of physicians and surgeons. In the latter instance the teaching is largely through short lecture courses for which the lecturer receives no payment.

LIBRARIES.

In 299 schools out of the 692 reporting, no evidence was found of anything in the nature of a library. The reports said "no books" or "no data," or ignored the question. In the remaining schools, reports showed 92 in which the number of books did not exceed 25, and it was found not to exceed 100 in over two-thirds of the entire number reporting. In some instances libraries were reported containing from 100 books up to 1,000, and in two or three instances beyond that number. In the latter case it seemed probable that the library usually was that of the hospital, the medical school, or of the physician in charge, and thus more or less available to the student nurse, rather than a library selected with special reference to the needs of the training school and freely and easily accessible to the students at all times.

TUITION FEES FOR PRELIMINARY INSTRUCTION.

In this country tuition fees are charged in six schools, the very small sum of $25 forming the usual fee. These schools are in all but one instance those offering a full six months' course. They are—

Johns Hopkins Training School, Baltimore, Md	$50
Presbyterian Training School, Chicago, Ill	25
Lakeside Training School, Cleveland, Ohio	25
University of Minnesota, Minneapolis, Minn	25
University of North Dakota, Fargo, N. Dak	25

In the school connected with the Children's Hospital, Boston, a fee of $200 is charged, which covers not only the preliminary instruction but that given during the entire course. This is a small but admirably managed and highly progressive school, which has by its various affiliations secured exceptional opportunities and advantages for its students, for which they willingly pay.

In this school the preliminary course is given largely in Simmons College, where the students receive all of their scientific preparation. There is a slight but distinct tendency on the part of training schools to seek some such relationship as this, and several have turned to colleges or technical schools for that scientific groundwork which the training school without endowment, trained teachers, laboratories, or equipment can not give in any satisfactory way.

In the Waltham Training School, Waltham, Mass., tuition fees amounting to $250 are charged for the first two years of the course. This school offers an excellent preparatory course, but limited opportunities for hospital training and practice. The larger part of the students' training is obtained in the private practice of physicians, payment for their services going to the support of the school.

RELATIONS TO COLLEGES.

Some of the training schools which have succeeded in establishing such a relationship in a greater or less degree are those connected with the hospitals here named, the institutions with which they are related being given also:

Children's Hospital, Boston, Mass., with Simmons College.
The Presbyterian Hospital, Chicago, Ill., with Rush Medical College.
The Mercy Hospital, Chicago, Ill., with Northwestern University Medical School.
Wesley Hospital, Chicago, Ill., with Northwestern University Medical School.
Evanston Hospital, Chicago, Ill., with Northwestern University Medical School.
Provident Hospital, Chicago, Ill., with Northwestern University Medical School.
Lane Hospital, San Francisco, Cal., with Cooper Medical College, Leland Stanford.
Iowa Methodist Hospital, Des Moines, Iowa, with Drake Medical College, Drake University.
Madison General Hospital, Madison, Wis., with University of Wisconsin (for some class and laboratory work).

An interesting experiment was made last year in the University of North Dakota, where a course was organized, designed to give instruction in the academic and technical subjects which precede the practical work in hospital training. The work as arranged covered one academic year and provided instruction in the usual subjects of anatomy, physiology, bacteriology, chemistry, hygiene and sanitation, dietetics, materia medica, and principles of nursing, and in addition suitable courses in psychology and sociology were offered. Arrangements were made with several adjacent hospitals to receive the students who satisfactorily completed this course. Three students entered last year, and as the movement is in the right direction, it should eventually attract a desirable grade of students and contribute materially to the improvement of nursing education. There does not appear to be here, however, any organic relation between the university and the hospitals which are said to be affiliated which would give the university control over the whole education of the nurse. Such relation would insure an adequate completion of the work begun, a proper grade and degree of instruction in actual nursing subjects, reasonable hours of practical work, etc.

TRAINING SCHOOLS FOR NURSES IN UNIVERSITIES.

Perhaps the most promising effort now being made anywhere to establish nursing on a satisfactory educational basis is that which has recently been inaugurated at the University of Minnesota, in its new school of nursing. Dr. Richard Olding Beard, professor of physiology in the university, says of it:

The university education of the nurse and the university control of the training school for nurses, as a department of instruction, is an accomplished fact. The training school for nurses of the University of Minnesota, as well as the university hospital,

is in the direct charge of the faculty of the College of Medicine and Surgery. Its preliminary courses of instruction and its undergraduate lectures are given in the laboratories and lecture rooms of that college. Its examinations are conducted by the chiefs of the college departments. Its diplomas are conferred by the board of regents of the university, upon recommendation of the faculty.

Its integrity as a teaching department is assured not only by its university control but by the fact that the university hospital exists in itself as a purely teaching institution. It is the clinical laboratory of the college. It is devoted to the education of medical students and the training of nurses. So conceived and so maintained as a teaching hospital, it must of necessity realize the highest ideals of a hospital service. Its existence is justified by the attainment of nothing less. Entertaining as it does free patients from all parts of the State, selected for the clinical contribution they offer, and selected moreover from among those who are unable to pay for care and treatment, the realization of these ideals is unembarrassed by any secondary considerations. The best results to the patient and the highest values to the student in the practice and teaching of scientific medicine are its only and its lofty aims.

The unification of medical teaching in the State of Minnesota under the immediate control of the State university guarantees the future growth and the high quality of its service. The training school will be developed as a special department of this single university school of medicine. ("The university education of the nurse." Teachers College Record.)

A somewhat similar situation in plan exists in the school of nursing of the University of Texas, which in 1897 was by action of the regents of the university created as—

one of the regular schools of the medical department of the university, and the pupil nurses are recognized as students of this branch of the medical department. The regents of the university are responsible for the instruction of the student nurses in all branches and have placed the management of the curriculum in the hands of a committee composed of the clinical instructor of nursing, the dean, and two members elected annually from the faculty of medicine by the members of the faculty. The committee has arranged a curriculum and appointed from the members of the faculty and corps of lecturers and demonstrators the special instructors in each branch. (Bulletin of the University of Texas, Mar., 1910, p. 96.)

The clinical instructor of nursing referred to above is the superintendent of nurses, who is a member of the faculty. A different and less close relationship with the university is held by those schools of nursing forming an integral part of university and other hospitals connected with the following institutions: University of Michigan, Ann Arbor, Mich.; George Washington University, Washington, D. C.; University of Virginia, Charlottesville, Va.; University of Colorado, Boulder, Colo.; Washington University, St. Louis, Mo.; University of Missouri, Columbia, Mo.

The advantages to training schools resulting from such connections with universities are emphasized in letters recently received by the writer from the heads of several such schools. They may be summarized about as follows:

(*a*) Lecture rooms, laboratories, libraries, and teaching material are usually freely available to student nurses.

(*b*) Instruction is given to student nurses by professors and instructors in medical schools, those who are accustomed to teaching and to providing systematic, thorough instruction.

(*c*) Respect is shown for the theoretical side of their work, and student nurses are obliged to give the same attention to their studies that the other students give.

(*d*) The foregoing conditions naturally operate to attract a higher grade of candidate for admission.

The letters dwell also on the value of less tangible matters, such as the facts that the nurses are entered as students in the university, graduate with the other students, receive their diplomas from the hands of the president, and catch something of the university spirit. An interesting opportunity exists here for strengthening and developing training schools and improving the education of nurses which should be fully utilized. All of the resources of the university, and not alone those of the medical department, should be freely available to student nurses, since nursing draws from many sources beyond the strictly medical and sanitary for its perfection. Valuable, however, as are these connections with university, college, or technical school, they will not alone solve the problem of education in nursing. If the connection is through the hospital of which the training school is a part, there may be certain opportunities available, certain privileges granted to the student nurses, but there is no certainty that the university hospital will differ materially from other hospitals in its relation to the training schools. There are several schools belonging to university hospitals reaping no obvious benefit from such relationship.

If, on the other hand, the training school is a department of the medical school, there may be some further advantages secured to it, but there is no guarantee that the medical school will be willing to incur any appreciable expense for the training school or accord it any real freedom for growth. This relationship is very interestingly discussed by Dr. Alfred Worcester, of Waltham. He says:

> Of course it would be a step forward from the present hospital domination of the training school if the education of nurses were assumed by the medical schools which have whole control of their hospitals. But such a step would at best be only a halfway step and would entail great difficulties. It is true that the nursing profession is secondary to the medical profession in that the nurse is the doctor's executive officer. In the same way the engineer of the battleship is secondary to the captain. But from that it does not follow that the education of naval engineers should be intrusted to officers of the line. Engineers must be educated by engineers, surgeons by surgeons, and nurses by nurses—each profession in its own school, under its own separate faculty, and controlled only by the university. ("The education of nurses." The University Record, Chicago University, May, 1903, p. 1.)

It is the opinion of some of those who have for many years been engaged in hospital and training school work, who have given careful

study to the peculiar relationship which has been established between them, and have met in every form the difficulties due to that relationship, that the first step toward developing proper schools of nursing lies in separating them from the hospital and its control and placing them upon an independent basis. Under the present system the school has no life of its own. It is in essence simply a part of the hospital service, and it is unquestionably governed in all its important functions, not by a body concerned with their fulfillment, but by everyday hospital conditions and necessities. That a number of important hospitals are interested in their schools and kindly disposed toward their students does not greatly affect the situation. It does not insure the maintenance of any stable educational policy; it does not prevent sweeping changes in the school as the result of a change in the administrative staff of the hospital, and members of that staff who may be hostile to the education of nurses will have power to do such destructive work in the training school as may set it back for years, upon so insecure a foundation does it now stand. Mrs. Hunter Robb, writing on this subject, said:

> Hospital authorities and superintendents of training schools have done to the best of their ability, and have utilized approximately to the limit the possibilities of the system under which they have had to work. The main limit is based upon the fundamental fact that from the educational standpoint the relation of the training school to the hospital work has always come first and the nurses' education has been relegated to a secondary position. In no instance has a training school for nurses been founded primarily as an educational institution; it has always been regarded as an appendage to a hospital. But until this is changed and schools for nurses are founded for the primary purpose of educating women in nursing, the hospital being utilized as the ground for gaining practical experience, we can scarcely hope for any uniformity in nursing or for the higher grade of work for the hospital or the sick. ("Affiliation of training schools for educational purposes," Mrs. Hunter Robb. Report American Federation of Nurses, 1905, p. 159.)

In an interesting and suggestive paper on the education of nurses, Dr. F. P. Denny, of Brookline, Mass., advances the same idea, pointing out the need for an educational institution which would assume the whole responsibility of the training of nurses. After showing the improvements which such schools might bring about, he says "these reforms are sure to come if the training is wholly in the control of an institution whose only object is to secure the best possible education for the nurse." ("The need of an institution for the education of nurses independent of the hospitals," by Francis P. Denny, M. D. Boston Medical and Surgical Journal, June 18, 1903, p. 658.)

An English writer (a physician), discussing this subject not long since, advocated the incorporation in England of a Royal College of Nursing, which would grant degrees in nursing just as they are granted in medicine. After briefly outlining a plan for such an organization he says: "The degrees might rightly follow the lines of the patron

profession, and a diplomaed nurse might be entitled to the degree of B. N." (bachelor of nursing). A higher diploma, he thinks, should be encouraged for those who aspired to administrative or teaching posts. "Only those," he says, "who held a recognized degree would be recognized as nurses, and the line of demarcation would be sharp and clear." ("The nurse of the future," Josiah Oldfield. Westminster Review, Dec., 1905, p. 661.)

But a college for nurses is not a new idea. It was included in the plans of that committee of the State Charities Aid Association which in 1874 was instrumental in establishing a training school in connection with Bellevue Hospital, New York. "As the work advances," their report reads, "we hope to establish a college for the education of nurses which will receive a charter from the State and become a recognized institution of the country."

The founders of Bellevue Training School were in a position to plan for future educational growth and development because this school, though closely connected with the hospital, was not controlled by it, but under the management of a separate board maintained largely or wholly by separate funds. The board entered into an agreement with the hospital to provide the students opportunities for definite training and experience in return for such services as they could render the sick. In the hospital they were subordinate to the organization and its system, but under the control of the school board in matters of teaching, training, and discipline.

The earlier schools, both in England and America, were established on this basis, and the very first school founded by Florence Nightingale, in 1860 in connection with St. Thomas Hospital in London, was and still is managed by a separate board, under its own endowment, and represents a distinct educational institution. The Illinois Training School, of Chicago, is a separate institution for the education of nurses, and has a large and strong board of directors. It is connected with a great municipal hospital—the Cook County Hospital—and a contract is made annually by the school to carry on the nursing in the hospital. But in the last analysis this school is really maintained by the student nurses, for whose services the hospital pays the directors of the school a stated sum per capita per day.

With one or two exceptions, however, the schools in this country have not been able to maintain a separate status, and they have one by one eventually become incorporated into the hospital. No careful study has been made of the causes of this transition, but it is probably safe to hazard a guess that the lack of sufficient endowment and the difficulty of securing funds to maintain the school were largely instrumental in bringing about the change. And hospitals were eager to secure control of the schools. The crux of the whole situation seems to lie here—education when worth anything

is costly, and no scheme of education that will fitly prepare women for the extraordinarily varied demands in nursing can be carried on without expense. The hospital knows this, but can not meet it. Society has so far not recognized it; while requiring much of the nurse in private, and of late in municipal life, it has left the entire task of educating nurses to the hospital, unmindful of the fact that the hospital is not founded for such work primarily and that it can not incorporate into its own great scheme of activities another scheme equally great but entirely different in purpose and requiring special conditions and a special government.

While hospital and training school are fundamentally interdependent, there is no more reason why the hospital should own and control the training school than the medical school. The basis of relationship should be one of close and efficient cooperation.

Dr. Henry M. Hurd, until recently superintendent of the Johns Hopkins Hospital, Baltimore, in a valuable paper on this subject says:

It is well known that no first-class school of any sort, and no form of higher education can be a profitable business enterprise; that the teaching of theology, of law, medicine, and pedagogics, or instruction in the strictly technical schools can not rest upon a commercial basis and pay its proper expenses. It should ever be borne in mind that nursing the sick is now a calling as much as law, medicine, or theology; that it enters into the life of the community to a greater extent even than these professions, and that the families of the rich equally with the poor are concerned in the proper education and training of nurses.

Medical schools must have an ample endowment to place medical education upon a proper footing and do good educational work. It is equally true that a similar endowment is necessary for the training schools for nurses. The duty is apparent; to the nurse is committed the personal care of the sick in every community; she comes into the family; she bears the responsibility and care of the family in the absence of the family physician; she represents him, replaces him, assists him, and supplements his labors by her efficiency and helpfulness. Through her efforts his labors to cure his patients are made effective. If she is imperfectly trained and unable to appreciate the higher range of her duties, she becomes a broken reed, upon which he can not lean with safety.

Then, too, in the more public duties of the nurse an adequate training is equally essential. In every city, large or small, nay, in every village or town, the hospital, with its properly arranged, well-equipped operating room, efficiently supervised by a trained nurse, has become essential, so that an accident case, or one requiring sudden surgical intervention, can be cared for as speedily and as well at the home of the patient, wherever that may be, as in the largest city clinic or the most expensive hospital in the land. The competent and thoroughly trained nurse is an all-important adjunct of every such hospital.

The nurse has also been introduced into the public school with great advantage to the public welfare. She watches over the health of the pupils; she observes the hygienic conditions of the school; she visits the home to know how the pupils live there and to give such instruction as will improve the conditions of living. In district nursing her services also require the highest grade of intelligence and training. She must become, to use Florence Nightingale's term, "a missioner of health" to families of the poor, and must preach the gospel of hygienic living and healthful surroundings.

Upon the tuberculosis nurse is placed the hardest part of the battle which is being waged against tuberculosis in every part of the country. She not only must look after the sick as a nurse, but also is responsible for the hygienic care of the sick and the instruction of the family, so that tuberculosis may not be a source of danger to the community. She must equally instruct the family and supervise the home, so that other members of the family may not, through inadvertence or ignorance, acquire the dread disease. She must see that families live healthily; that too many are not crowded into an infected room; that rooms are properly disinfected after the death or removal of a tubercular patient, and must protect the whole community from the spread of tuberculous disease.

Everywhere her presence makes for comfort in sickness, for the minimization of the loss to the community and the state which disease, suffering, and death entail, for the prevention of disease, and for the social uplift which is the hope of the nation with its conglomerate population and racial diversities and animosities. More surely than education alone, more strongly than the ties of religion, more firmly than self-interest and commercialism, this form of service will bind society together and assist each class in the effort to lighten the burdens of the other.

When such important duties devolve upon the trained nurse it is short-sighted in the extreme and contrary to good policy to leave the establishment and maintenance of training schools to private initiative, where too often the governing motive must be to get public or private hospitals supplied with nurses at the lowest cost to the institution.

Is it not the duty of the public, rather for its own welfare, to see that nurses' training schools are adequately endowed, so that young women of character and ability can be induced to come to them, and so that when they come to such training schools they may be properly instructed for the discharge of duties which take hold of the health and welfare of the entire community?

("Shall training schools for nursing be endowed?" Dr. Henry M. Hurd. The American Journal of Nursing, Sept., 1906, pp. 849–952.)

Whether the freedom of the training school is brought about by means of endowments or by State or municipal aid does not matter. The thing to be secured is a separate government for the training school. The actual relation of the school to the hospital need not greatly change in certain ways, and student nurses on duty would always be subject to the administrative régime. The school buildings should remain beside the hospital. But the endowment should provide such extensions and additions to those buildings as will make them schools in the accepted sense of that word—lecture rooms, laboratories, teaching material—every equipment needed for the required academic and scientific work should be supplied, and nothing should stand in the way of the student in securing proper foundations of this nature for her later work in the hospital. She should, however, pay for her tuition and probably for a part of the time for her board.

The faculty should determine the requirements for admission, length of course, subjects to be taught, in theory and in practice, diplomas and degrees, vacations, salaries for staff, and other similar matters, and should make all arrangements and adjustments with the hospital.

The board, the controlling body of the school, should be inspired by the fullest appreciation of the social importance of the nurse's work and should have a clear understanding of the scope and extent of her professional field and of the way in which it is developing.

It should be clearly understood that in insisting upon the necessity for a sounder scientific foundation and a fuller knowledge of the principles and the general theory underlying and relative to the art of nursing, there is no thought of minimizing in any degree the importance of the practical training and the value of experience which the hospital provides, nor of reducing it in any way which might tend to render it less serviceable for its purpose. This practical work, however, in the hospital or out of it, always must suffer when the theoretical foundations are weak. No one with any real knowledge of the situation could underestimate the value of the opportunity which the hospital affords the student, of actually living and working among the sick under the supervision and instruction of a staff of expert nurses, whose methods can be studied at close range. In no other way can the student observe and study the various diseases, become familiar with their symptoms, stages, complications, and fluctuations, and watch the effect of treatment and care of them. The steady industry and the ordered life and the increasing responsibility in the hospital supply conditions under which essential qualities of character and habits of thought and action are developed; decision, self-control, fortitude, resourcefulness, and judgment are in some measure built up in the student who becomes a member of a highly-organized staff controlled by a unique and wonderful discipline, and guided by traditions of courage, devotion to duty, and self-sacrificing service for others. So far from undervaluing that which the hospital can give, it is the conviction of the writer that these magnificent opportunities should only be given to students thoroughly prepared to take the fullest possible advantage of them; they should be properly utilized and wisely directed.

STATE REGISTRATION.

ENACTMENTS.

North Carolina, in 1903, was the first State to present a bill and secure a law providing for the State registration of nurses. Within the eight years that have elapsed since that date, 31 States have succeeded in obtaining such laws. In the 5 States of Vermont, Tennessee, Idaho, Oregon, and Wisconsin these laws have been passed in 1911. In New Jersey, where a defective law was enacted in 1903, the State society of nurses is struggling against considerable opposition to secure the passage of a new bill which shall make some definite requirement in the way of educational and other standards for nurses.

A careful study of the laws which have so far been enacted in this country will serve to show that there is still much work to be done, and that as yet the foundations only have been laid upon which may be built bulwarks of suitable strength for the adequate defense of educational standards in nursing. Take that most important feature, preliminary education, and it will be seen that from the standpoint of statutory requirements practically no definite standards exist, since in almost every instance the requirement made is qualified by the term "or an equivalent," and 18 of the 31 enactments make no educational requirement whatever; 6 States (North Carolina, Maryland, Indiana, West Virginia, Oklahoma, and Delaware) ask for a high-school course or "its equivalent;" 2 States (Minnesota and Nebraska) call for high-school entrance examinations; 4 States (California, Missouri, Michigan, and Oklahoma) for a common-school course, or equivalent, and the remaining 18 States leave the matter untouched, to be determined by the examining board or others. What may be accepted as properly constituting a just equivalent of the full high-school course, of one or two years of high-school work, or of a completed grammar-school course, must apparently under present conditions be left to the superintendents and principals of training schools in different States to determine. This would be under any circumstances a difficult and perplexing problem, but under the present system of training-school administration it is a well-nigh hopeless one in the majority of instances. The head of the training school is now unquestionably obliged to give herself great latitude in this matter. She must often interpret this equivalent according neither to the letter nor to the spirit, but in accordance with the requirements of the hospital. This in the last analysis controls more or less arbitrarily the question of preliminary standards of education, and herein lies the reason for the consistent opposition which nurses have met and are likely to meet on this point.

As to the type of hospital in which the practical training may be given, the laws provide for a considerable degree of variety. Several States provide that the school must be connected with a general hospital, which may be further qualified as "registered," "chartered," "approved," or "in good standing." In various other States the training may be in sanatoria, State hospitals, or special hospitals, usually with the provision that a certain additional specified time, which may be from six months to one year, shall be spent in a general hospital. Three States (New Jersey, Pennsylvania, and Massachusetts) make no mention of where the training is to be received, thus leaving the matter entirely in the hands of the examining board.

The occasional use of the word "reputable" suggests problems, as, for instance, when the law requires that the training must have been received in a "reputable hospital." This is practically equivalent to

assuming that any hospital which can not actually be proved to be disreputable should be accepted as suitable ground for the education and training of nurses without reference to the character and scope of its work.

In the several laws in which mention is made of the subjects on which the applicant will be examined they are very similar, and include anatomy and physiology, hygiene, materia medica, dietetics or invalid cookery, and practical nursing in the care of medical, surgical, and obstetrical patients.

Notwithstanding, however, the very moderate requirements of these laws as a whole, they have apparently been the means of accomplishing definite, tangible results, and while the indirect influence which they have exerted can not be readily measured, it can be clearly recognized.

It appears from the statements of officers of various State societies that a number of small, private, or special hospitals or sanatoria which had been maintaining schools have been sufficiently affected by the laws to lead them either to seek suitable affiliations or to close the schools and carry on their work by means of a salaried nursing staff.

The effect of the laws upon the larger schools has been salutary, and in a very considerable degree the improvements in curricula noted during the past few years, the increase in teaching equipment, the better living conditions for students are due to the direct and indirect influence of the laws. Members who have served on examining boards for several years have had ample time to note the progressive improvement in successive groups of nurses from the same schools as they have presented themselves from year to year for examination, and nurses themselves are recognizing the fact that a registered nurse has a status in the community publicly and professionally which the unregistered nurse can not ordinarily hope to attain. In a number of the reports from training schools recently received by the Bureau of Education, statements were made that certain improvements and additions had been brought about to enable nurses to qualify for registration.

The opposition to the principle of State registration for nurses and to the enactment of laws providing for it has almost uniformly come from those who control or have some interest in private hospitals or sanatoria in which schools are established to secure nursing without expense, or from the short-term schools in which the pupil performs somewhat the same service in the private practice of one or more physicians. The opposition, however, also comes to some extent from general hospitals dependent upon their training schools and unwilling to support measures which will result in restricting the number of available qualified candidates for admission.

A somewhat careful study of the opposition which has been met both in this country and abroad shows how largely commercial it has been and is in its nature, and to what lengths the exploitation of pupil nurses has been carried. There could indeed be no possible rational objection urged against a procedure the principle of which is recognized as sound in all other professions or vocations in which scientific knowledge and technical skill in definite degree are essential for public safety.

EXAMINING BOARDS.

It has been pointed out that in a few States the laws are so ill-defined, so low in their requirements, or so lacking altogether in this respect, that it seems doubtful if anything can be acomplished through them, since they appear merely to legalize low standards. It is clear that their value as a means of public protection and of uplifting nursing education must depend to an unusual degree upon the board of examiners, upon whom, in the absence of statutory requirements, the responsibility of determining all standards, as well as of interpreting and enforcing them, must rest. Whatever standards in nursing are set up in such States must be by their action, and a weak, inefficient, or timid board will have little effect upon training schools and their work.

An immense responsibility, under any conditions, rests upon these examining boards. They are the agencies through which the laws must work, and while no board, however zealous, able, and energetic can make a poor school give good training, it can be of great and constant service in helping schools to discover their own deficiencies and in making it difficult, if not impossible, for those training schools which are not willing to meet the very modest requirements which the law now makes to continue in operation and to attract candidates.

There is hardly any duty falling upon the State society of nurses of more importance than the nomination from its membership of candidates for appointment to the examining boards. These boards should be composed of the best representatives of the profession. They should be women of liberal education, or as near it as can be found, highly skilled in nursing, broad-minded, courageous, vigorous, and alert. Those who are, or have recently been, teachers, if qualified in other ways make excellent examiners. The board should be carefully organized, with its powers accurately defined. It should have suitable headquarters, properly kept records, and enough clerical assistance to do its work. It should be in a position to know definitely the character and the amount of work which each training school in the State is doing, and it should have a clear idea of the hospitals with which these schools are connected, their standing in the community of which they are a part, their resources, and the scope of their

work. The board should have the power of obtaining whatever information it may need, and it should be ready to publish when advisable such statements, suggestions, or instructions as will enable training schools to strengthen themselves in those departments which are shown to be weak. The more carefully one considers the work of the examining board, the more certain does it seem that they have it in their power to do much of that constructive, unifying work for our training schools which is so urgently needed. All work of this nature will of necessity be slow, since in very few of our States are the laws mandatory. In the majority they are permissive only, and in those States anyone is permitted to nurse and to call herself a nurse. The requirement of the law is that she shall not call herself a *registered nurse* or assume a similar title; and even in those States where mandatory laws have fortunately been secured their value will be proportionate to the degree of vigor with which the laws are enforced.

Thus at every turn we are brought back to the examining board and to face squarely its great responsibilities and powers. As yet these boards are working largely upon independent lines, but there is little doubt that they will more and more confer together upon the many problems in nursing education which are of common import, which must be solved with reference to general good and uniform standards, rather than to the special conditions of a special locality.

TRAINING SCHOOL INSPECTION.

For adequate supervision of this branch of woman's education in any State, it will be necessary to develop further the idea of systematic and continuous inspection and supervision of hospitals and training schools. In New York this principle was adopted several years ago, largely owing to the energy and persistence of Miss Sophia Palmer, editor of the Journal of Nursing. The inspector is appointed by the regents, and her work is and has been of incalculable value, recognized as such by the nursing profession throughout the State. In the present stage of nursing education, where the relationships between the training school and the hospital, the physician and the public, present issues of a complicated and confused nature, often difficult of adjustment, there is urgent need of the most patient, careful investigation, study, and thought. Inspectors should be selected with the utmost care from those who have had exceptional education and training and who are recognized as experts in training-school work.

There are now regular inspectors in New York, in Illinois, and in Washington. In Iowa a member of the examining board is appointed to act in this capacity for a certain term, and this apparently holds true of New Hampshire in a sense. In several States members of

the examining boards do informal inspection, through their president, secretary, or other selected members. In the American Journal of Nursing for March, 1911, the province of the inspector is thus editorially discussed:

As the work develops the term inspector seems to be a misnomer, and she is vastly more than an inspector of buildings, equipment, and methods. She not only reports conditions as she finds them, but her work is constructive and advisory, and through her influence chaotic conditions are reduced to order, and affiliations are provided for, which, without the authority and guidance of a State official from the outside, would be impossible to bring about. That she should be not too young, a type of woman who commands not only respect but confidence, and that she herself should have battled with all of the problems of the training school, goes without question. Otherwise she can be little more than a figurehead in the vital work of this period.

The laws for State registration having been brought into effect through the influence of nursing organizations, such organizations have a moral right, at least, to insist that they shall be administered in a manner satisfactory to the highest nursing ideals, and when the appointments of such State officials are made without regard to a proper fitness, whether moral or professional, protest should be vigorous and continued until efficient nurses are installed. * * *

One of the things that nurses must look to in the administration of laws for State registration is the proper recognition by the public of their official representatives, and the only way in which such recognition can be brought about is for the whole nursing body to concede to such officers confidence, loyalty, and support; also such liberal compensation to inspectors and secretaries that as they go about in the performance of duty they may be able to afford the outward manifestations that custom calls for in the person occupying a dignified official position.

Some important features of State laws for registration of nurses.

	States.	Year enacted.	Mandatory or permissive.	Preliminary education required.	Years in course.	Hospital training required.	Composition of examining board.	Title.	Remarks.
1	North Carolina	1903	P.	High school graduate or equivalent.	3	General hospital	3 nurses, 2 physicians	R. N.	
2	New Jersey	1903	P.	None	2	No requirement	No board	R. N.	Power to issue licenses vested in county clerks.
3	New York	1903	P.	None	2	Hospital or sanitarium	Nurses	R. N.	
4	Virginia	1903	M.	None	2	General hospital	Nurses	R. N.	
5	Maryland	1904	P.	High school graduate or equivalent.	3	General hospital	Nurses	R. N.	
6	Indiana	1905	M.	High school graduate or equivalent.	2	General hospital	Nurses	R. N.	
7	California	1905	P.	Grammar school or equivalent.	3	General hospital	No board	R. N.	Power vested in regents of University of California.
8	Colorado	[1] 1905	M.	None	3	General hospital or sanitorium.	Nurses	R. N.	
9	Connecticut	[1] 1905	P.	None	2	(2)	Nurses	R. N.	
10	New Hampshire	1907	P.	None	2	(2)	Nurses	R. N.	
11	District of Columbia	1907	P.	None	2	General hospital	Nurses	R. N.	
12	Iowa	1907	P.	None	3	General hospital	2 physicians, 2 nurses, secretary State board of health.	R. N.	Decisions of State board of health are final.
13	West Virginia	1907	P.	High school graduate or equivalent.	2	General hospital	Physicians	R. N.	Only voters eligible to office.
14	Minnesota	1907	P.	High school entrance or equivalent.	3	General hospital	4 nurses, 1 physician	R. N.	2 nurse members must have two or more years experience in teaching nurses.
15	Illinois	1907	P.	None	3	General hospital	Nurses	R. N.	3 members required to have two years' experience in teaching nurses.
16	Georgia	1907	P.	None	3	Hospital or sanitarium	Nurses	R. N.	
17	Wyoming	1909	M.	None	2	General hospital [4]	Nurses	R. N.	
18	Washington	1909	P.	None	2	General hospital	Nurses	R. N.	
19	Texas	1909	M.	None	2	General hospital or sanitarium.	Nurses	R. N.	
20	Oklahoma	1909	M.	High school graduate (1914) or equivalent.	2	General hospital [5]	Nurses	R. N.	
21	Nebraska	1909	P.	High school entrance or equivalent.	2	General hospital or sanitarium.	Nurses	R. N.	Called board of secretaries, who assist and advise State board of health.

[1] Amended in 1907.
[2] Medical, surgical, or obstetrical cases in public or private hospital.
[3] Hospitals registered by regent State board of medical examiners.
[4] Or 3 years equivalent in special hospitals.
[5] Or special hospital with 6 months' additional general training.

THIS PAGE BOUND VERTICAL IN BOOK

Some important features of State laws for registration of nurses—Continued.

	States.	Year enacted.	Mandatory or permissive.	Preliminary education required.	Years in course.	Hospital training required.	Composition of examining board.	Title.	Remarks.
22	Delaware	1909	P.	High school graduate or equivalent.	3	General hospital	3 nurses, 2 physicians	R. N.	Physicians representing two leading schools of medicine.
23	Pennsylvania	1909	P.	None	2	Surgical and medical nursing.	3 physicians, 2 nurses	R. N.	Physicians must also be hospital officials.
24	Missouri	1909	P.	Grammar school or equivalent.	2	General hospital [1]	Nurses	R. N.	
25	Michigan	1909	P.	Grammar school or equivalent.	2	General hospital [1]	3 nurses, 1 physician, secretary State board of health.	R. N.	
26	Massachusetts	1910	P.	None	2	No requirement	3 nurses, 1 physician, secretary State board of medical registration.	R. N.	Secretary of State board of medical registration, also secretary of board of nurse registration.
27	Vermont	1911	P.	None	2	Any hospital	2 physicians, 1 nurse	R. N.	Physicians must be on staff of hospital having a training school. Nurse—3 years' nursing experience.
28	Tennessee	1911	M.	None	2	Hospital or sanitarium	5 nurses	R. N.	Nurses must have indorsement of nurses society to which they belong.
29	Idaho	1911	P.	None	[2] 2	General hospital approved by board.	2 nurses, 1 physician	R. N.	Both to be nominated by State Association of Graduate Nurses, and 5 years' practice.
30	Oregon	1911	P.	None	2	General hospital (if reputable).	3 nurses	R. N.	Nominated by State Association of Nurses.
31	Wisconsin [3]	1911							

[1] Or equivalent in sanitarium, special, or one or more hospitals.

[2] Three years after 1914.

[3] Details not yet received.

THIS PAGE BOUND VERTICAL IN BOOK

TABLE 1.—*Comparative statistics of nurse training schools.*

Year.	Schools.	Nurse pupils.	Capacity of hospitals (beds).	Graduates.
1911 [1]	1,121	29,805	194,236	7,720
1910	1,129	32,636	214,597	8,140
1900	432	11,164	84,227	3,456
1890	35	1,552	.....	471
1880	15	323	.....	157

[1] Includes the statistics of three schools in Porto Rico.

TABLE 2.—*Summary of statistics of schools for training of professional nurses, 1910–11.*

States.	Class A, excluding schools connected with hospitals for the treatment of nervous, mental diseases, etc.					Class B, including schools for the treatment of nervous, mental diseases, etc.				
	Schools.	Students.	Graduates.	Capacity (beds).	Average daily number of patients.	Schools.	Students.	Graduates.	Capacity (beds).	Average daily number of patients.
United States	1,048	26,511	6,971	101,708	53,232	70	3,251	738	92,378	[1] 68,856
North Atlantic Division	412	11,707	3,243	46,782	29,537	40	1,828	470	58,096	36,183
South Atlantic Division	131	2,628	627	9,519	4,015	5	208	43	6,925	5,124
South Central Division	72	1,428	336	7,081	2,295	2	48	15	2,700	2,680
North Central Division	330	7,911	2,073	27,881	12,463	23	1,167	210	24,657	24,889
Western Division	103	2,837	692	10,445	4,922	.....	.....	.....	.....	.....
North Atlantic Division:										
Maine	11	319	72	746	496	2	48	13	1,500	1,390
New Hampshire	14	202	41	503	276	1	60	15	1,114	.....
Vermont	10	167	48	390	211	1	17	5	595	.....
Massachusetts	70	1,933	554	6,810	3,058	9	581	136	10,674	5,772
Rhode Island	7	261	67	735	521	1	130	15	200	.....
Connecticut	17	488	117	1,936	1,272	2	37	14	3,350	.....
New York	132	4,147	1,212	18,739	13,479	13	456	170	28,811	23,876
New Jersey	29	700	196	2,504	1,547	4	137	35	5,215	3,536
Pennsylvania	122	3,490	936	14,419	8,677	7	362	67	6,637	1,589
South Atlantic Division:										
Delaware	2	34	11	137	80	.....	.....	.....	.....	.....
Maryland	20	648	149	2,657	1,612	2	47	18	2,978	2,887
District of Columbia	10	426	131	1,545	566	1	33	15	1,190	1,130
Virginia	21	399	110	1,433	384	1	7	3	1,182	1,107
West Virginia	16	215	48	916	273	.....	.....	.....	.....	.....
North Carolina	25	311	63	1,019	231	.....	.....	.....	.....	.....
South Carolina	8	135	37	439	300	1	121	7	1,575	.....
Georgia	24	407	66	1,158	467	.....	.....	.....	.....	.....
Florida	5	53	12	215	102	.....	.....	.....	.....	.....
South Central Division:										
Kentucky	13	190	57	775	134	1	17	3	1,200	1,150
Tennessee	8	142	43	502	229	.....	.....	.....	.....	.....
Alabama	6	158	32	462	115	1	31	12	1,500	1,510
Mississippi	6	81	20	476	135	.....	.....	.....	.....	.....
Louisiana	7	280	75	1,706	311	.....	.....	.....	.....	.....
Texas	19	377	72	2,124	870	.....	.....	.....	.....	.....
Arkansas	7	148	31	800	421	.....	.....	.....	.....	.....
Oklahoma	6	52	6	236	80	.....	.....	.....	.....	.....
North Central Division:										
Ohio	51	1,151	324	4,546	2,051	3	131	46	4,925	4,831
Indiana	28	488	135	1,449	885	.....	.....	.....	.....	.....
Illinois	67	2,119	563	7,382	4,231	5	472	38	5,370	6,103
Michigan	39	997	266	3,208	1,161	3	157	34	4,210	3,316
Wisconsin	16	380	109	1,157	632	.....	.....	.....	.....	.....
Minnesota	27	672	178	2,531	767	3	161	40	2,710	3,735
Iowa	30	686	151	2,073	629	5	138	38	3,720	3,340
Missouri	31	763	194	3,114	1,444	.....	.....	.....	.....	.....
North Dakota	5	65	19	232	13	.....	.....	.....	.....	.....
South Dakota	7	99	27	317	55	.....	.....	.....	.....	.....
Nebraska	17	334	68	1,326	335	2	37	6	1,042	914
Kansas	12	157	39	546	260	2	71	8	2,680	2,650
Western Division:										
Montana	6	126	35	665	180	.....	.....	.....	.....	.....
Wyoming	3	40	14	210	113	.....	.....	.....	.....	.....
Colorado	17	429	98	1,808	875	.....	.....	.....	.....	.....
New Mexico	1	14	6	100	60	.....	.....	.....	.....	.....
Arizona	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Utah	4	118	27	425	273	.....	.....	.....	.....	.....
Nevada	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Idaho	2	29	6	130	50	.....	.....	.....	.....	.....
Washington	20	365	98	1,288	474	.....	.....	.....	.....	.....
Oregon	4	186	50	750	40	.....	.....	.....	.....	.....
California	46	1,530	358	5,069	2,857	.....	.....	.....	.....	.....

[1] In so far as reported to this office.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A.*

[Class A excludes schools connected with hospitals for the treatment of nervous and mental diseases, etc.]

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	ALABAMA.											
1	Birmingham	Hillman Hospital *	Miss O. B. Holt	22	2	4	80					
2	....do	St. Vincent's Hospital	Sister Chrysostom	35	3	8	175	90	Yes	10	C. S	18-30
3	Mobile	Providence Infirmary *	Sister Stephanie	26	3	3	80					
4	Montgomery	St. Margaret's Hospital *	Sister Mary Sienna	27	3	2	60					
5	Normal	Agricultural and Mechanical College for Negroes	Pearl L. Younger	12	3	3	22	5	Yes	7	2 years, normal	18
6	Tuskegee	Tuskegee Institute	John A. Kenney, M. D	36	2	12	45	20	Yes	8	8th grade	18-35
	ARKANSAS.											
7	Fort Smith	Sparks' Memorial Hospital	Menia S. Tye	15	2	3	100	46	No	10	1 year H. S	19-30
8	Hot Springs	Ozark Sanatorium	M. Agnes MacNally	6	2	3	40		No	10	H. S	25
9	....do	St. Joseph's Hospital *	Sister Mary Edward	17	2	8						
10	Little Rock	Physicians and Surgeons Hospital	Edward Meek, M. D	25	3	6	75	25	Yes	10	C. S	20
11	....do	Little Rock Sanitarium *	W. C. Green, M. D	27	2½		35					
12	....do	Pulaski County Hospital	J. Palmer Sheppard, M. D	18	2	1	300	150	Yes	9	8th grade	18
13	....do	St. Vincent's Hospital	Sister Bernard	40	2	10	250	200	Yes	8	....do	20
	CALIFORNIA.											
14	Eureka	Sequoia Hospital *	Ida M. Mason	10	3	5	45					
15	Fresno	Burnett Sanitarium	Ellen Eunice Garland	20	3	6	53	25	No	10	8th grade	20-35
16	Glendale	Glendale Sanitarium	Belle Wood Comstock, M. D	35	2½	16	60	40	Yes	9	9th grade	19
17	Los Angeles	California Hospital	Anne Armstrong Williamson	82	3	29	150	106	No	12	1 year H. S	21-35
18	....do	Clara Barton Hospital	Gertrude E. Constant	42	3	4	62	46	No	9	H. S	20-35
19	....do	Los Angeles County Hospital	Charles H. Whitman, M. D	93	2	31	600	500	No	8½	....do	20-32
20	....do	Emergency General Hospital	Rose M. McDonald	35	2	8	75	45	No		1 year H. S	21
21	....do	Hospital of the Good Samaritan	Helen D. Jackson	60	3	13	100	70	No	8	H. S	21-30
22	....do	Los Angeles Infirmary	Sister Mary Ann Keating	45	3	12	200		No	9	8th grade	21-35
23	....do	Pacific Hospital	Lurain Tracy	30	3	5	50	35	No	9	H. S	20-32
24	Oakland	East Bay Sanatorium	Minnehaha Taylor	30	3	3	35	26	No	9	....do	20
25	....do	Fabiola Hospital	Jennie E. Jessen	53	3	9	120	55	No	9½	8th grade	21

THIS PAGE
VERTICAL

26	....do	Providence Hospital *	Sister Mary Alphonsus	46	3	10	130						
27	Pasadena	Pasadena Hospital	Lyda Anderson	50	3	14	100	65	No	9	H. S		20–35
28	Redlands	Redlands Hospital	Miss F. L. Armstrong	8	3	3	30	10	No	9	1 year H. S		18–30
29	Riverside	Riverside Hospital	Mary Jane Corry	12	3	5	45	23	No	10	H. S		20–24
30	Sacramento	Mater Misericordiae Hospital *	Sisters of Mercy	35	3	3	80						
31	San Diego	Agnew Hospital	Mabel E. Rainbow	31	3	3	50	45	No	9½	2 years H. S		19–35
32	....do	San Diego County Hospital	Amelia L. Smith	17	2	8	200	150	No	10	H. S		21
33	....do	St. Joseph's Hospital	Mother M. Michael Cummings	10	2½	3	60	35	Rarely	8½	8th grade		18
34	San Francisco	Buena Vista Sanatorium	Selina Kane	14	3	4	50	30	No	11	....do		19–35
35	....do	Hospital for Children	S. Milo Hinch	47	3	17	125	83	No	10	1 year H. S		19–33
36	....do	French Hospital	Lottie Christine Gansuer	40	2⅝	7	200	120	No	11	8th grade		18–30
37	....do	German Hospital	Werner Roehl	75	3	16	220	178	No	10	H. S		20
38	....do	Hahnemann Hospital	Therese Adele Smith	27	3	8	130	75	Yes	8	....do		21–35
39	....do	Lane Hospital	Elizabeth Calya Smith, R. N.	72	3	17	200	125	No	8	2 years H. S		20–30
40	....do	McNutt Hospital	Anne E. Bowman	25	3	2	100		No	9	H. S		18–28
41	....do	Morton Hospital	Ellen Mullen	11	3	2	50		No	9	8th grade		20–30
42	....do	Mount Zion Hospital	Jessie F. MacKenzie	30	3	7	52	40	No	9½	H. S		21
43	....do	Northwestern Hospital			3	6	34			9			
44	....do	St. Francis' Hospital	Elizabeth M. Jamieson	35	3		100		No	10			19
45	....do	St. Joseph's Home and Hospital	Sister Lidwina	18	3	3	136	120	No	11	H. S		18
46	San Francisco	St. Luke's Hospital	Helen Randal	37	3	12	96	66	No	9	1 year H. S		18
47	....do	St. Mary's Hospital	Sister M. Agnes White	68	3	11	157	100	No	10	....do		20–31
48	....do	St. Thomas' Hospital	Evaline McWilley	12	3	3	35	16	Yes	8	H. S		21–30
49	....do	St. Winfred's Hospital	Ethel B. Davie	25	3	3	50	35	Yes	8	....do		18–30
50	....do	San Francisco Hospital	Olive McGinnes	52	2½	16	400	350	No	9	1 year H. S		20
51	....do	Thomas Sanatorium	Elinor M. Casey	12	2½	7	25	20	No	10	H. S		18
52	....do	*Trinity Hospital*	Mrs. Mary V. Millar	34	3		45		No	12	8th grade		21–30
53	Sanitarium	St. Helena Sanitarium and Hospital	H. F. Rand, M. D	62	3	8	250	200	No	10	3 years H. S		20
54	San Jose	San Jose Training School for Nurses of the O'Conner Sanitarium.	Sisters of Charity	34	2, 3	11	110		Yes	9	1 year H. S		22
55	San Leandro	Alameda County Hospital *	Jeannie Cecele Burke	12	2½		150						
56	Santa Barbara	Cottage Hospital	Laura Laing Mitchell	15	3	3	30	23	No	9	8th grade		21
57	Santa Monica	Santa Monica Bay Hospital *	M. L. Loomis, M. D	8	3	1	26						
58	Stockton	St. Joseph's Hospital	Sisters in charge	17	3		40			8	1 year H. S		22
	COLORADO.												
59	Boulder	Boulder Colorado Sanitarium	Grace E. Mitchell, R. N	48	3	5	100	60	Yes	10	8th grade		19–35
60	....do	University of Colorado	Jean McIntosh, R. N	12	3		40	25	Yes	9	H. S		19–30
61	Colorado Springs	Bethel Hospital	Florence E. Standish	20	3	2	64	30	No	8½	....do		20
62	....do	Glockner Sanatorium *	Janet MacPherson	24	3	3	165						
63	Denver	Colorado Training School for Nurses of the City and County Hospital.	Signa M. Freek	40	3	12	300	285	No	8½	H. S		20–32
64	....do	Mercy Hospital *	Miss C. C. Feeney	48	3	9	115						
65	....do	Park Avenue Hospital	Marie V. Layman	14	3	3	27	19	Yes	9	8th grade		23–30
66	....do	St. Joseph's Hospital	Margaret Josephine Kimbal	68	3	15	300	175	No	9	....do		21
67	....do	St Luke's Hospital	Elizabeth Kyle	54	3	17	130	101	No	9	H. S		20–30
68	Fort Collins	Fort Collins Hospital	Harriet Amelia Dawson, R.N.	14	3	6	25		Yes	9	....do		18–30
69	Glenwood Springs	Glenwood Springs Sanitarium	Sadie B. Allison	7	2	3	50	10	Yes	10	1 year H. S		20–30
70	Greeley	Greeley Hospital	Luella McCalpin, R. N	10	2½	4	27		No	10	H. S		18–30
71	Longmont	Longmont Hospital	Martha A. Converse	8	2	1	15	7	Yes	9	....do		20

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.= High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	COLORADO—continued.											
72	Loveland	Dr. W. B. Sutherland's Private Hospital	W. B. Sutherland, M. D	6	2	2	25	8	Yes	12	H. S	21
73	Pueblo	Minnequa Hospital	Laura A. Beecroft	27	3	7	150	110	No	9	8th grade	18–35
74	do	St. Mary's Hospital*	Katherine O'Shaughnessey	12	3	9	125					
75	Trinidad	St. Raphael's Hospital	Sisters in charge	17	3		150	45	Yes	8	8th grade	20–31
	CONNECTICUT.											
76	Bridgeport	Bridgeport Hospital	Elizabeth F. Oliver, R. N	45	2½	15	175	115		9	H. S	21–35
77	do	St. Vincent's Hospital	Sister M. Alice Gannon	28	3	5	120	100	Yes	8	do	21
78	Danbury	Danbury Hospital	Susanna W. Cutler	20	2½	5	60	40	Yes	12	do	20–30
79	Hartford	Hartford Hospital	Lauder Sutherland	90	3	18	400	313	No	9	1 year H. S	20
80	do	St. Francis' Hospital	Sister Teresa	61	3	10	250	200	Yes	10	8th grade	20–35
81	Meriden	Meriden Hospital	Rose G. Reed	12	2½		54	25	No	10	H. S	18
82	Middletown	Middlesex Hospital	Sarah E. Hyde	14	2½	4	70	39	No	8½	8th grade	21
83	New Britain	New Britain General Hospital	Jennie L. Bassett	13	2½	5	60	40	No	10	H. S	20–32
84	New Haven	Grace Hospital	Marian Little	24	3	5	90	57	No	9	do	22–35
85	do	Connecticut Training School for Nurses of the New Haven General Hospital.	Emma L. Stowe	75	3	29	225	159	Yes	9½	do	21
86	do	St. Raphael's Hospital*	Josephine Coffey	34	3		142					
87	New London	Memorial Hospital	Nelly R. Burby, R. N	16	2	6	52	32	No	9	1 year H. S	22–35
88	Norwalk	Norwalk Hospital	Alice B. King	8	2	3	40	20	No	10	H. S	20
89	Norwich	William W. Backus Hospital	May L. Love, R. N	7	2	4	63	40	No	9	do	21–35
90	Stamford	Stamford Hospital	Evelyn M. Wilson	12	2½	6	35	32	Yes	11	do	20
91	Waterbury	Waterbury Hospital	Mary A. Andrews	20	2½		65	40	No	9	8th grade	20
92	Winsted	Litchfield County Hospital	Amy J. Robinson	9	3	2	35	20	No	10½	H. S	20
	DELAWARE.											
93	Wilmington	Delaware Hospital	Jennette F. Duncan	20	3	6	67	50	No	9	C. S	18
94	do	Homœopathic Hospital	Alida H. Turner	14	3	5	70	30	Yes	10	do	20

THIS PAGE
VERTICA

95	Washington	Capital City Training School for Nurses of the Washington Asylum Hospital.	Margaret P. Pridham	21	3	15	200	165	No	10	do	20-35
96	do	Children's Hospital *	Margaret Woodworth	30	3	4	105					
97	do	Freedmen's Hospital	Laura R. MacHale	40	3	13	278	161	No	9	H. S	21
98	do	Garfield Memorial Hospital	Georgia M. Nevins	45	3	17	225	130	No	8	H. S	22
99	do	Georgetown University Hospital *	Sister Mary Bertrand, R. N	34	3	3	150					
100	do	George Washington University Hospital	W. C. Borden, M. D	39	3	14	104	110	No	8	8th grade	19-30
101	do	National Homœopathic Hospital *	Marian Little	27	3	6	85					
102	do	Providence Hospital *	Sister Camilla	66	3	16	310					
103	do	Lucy Webb Hayes National Training School of the Sibley Memorial Hospital.	Pansy A. Havens, R. N	120	2½	39	75	54	Rarely	8	H. S	20
	FLORIDA.											
104	Gainesville	National Odd Fellows' Sanitarium	Miss N. F. Swan	4	2	1	35	17	Yes	8-10	do	18
105	Jacksonville	De Soto Sanatorium	Pauline B. Pleasants	17	3	6	36	25	No	9½	C. S	20-35
106	do	St. Luke's Hospital	Mary A. Baker, R. N	19	2½	3	65	35	No	9		18-31
107	Pensacola	Mission Hospital *	Frances Mann	3	2		19					
108	St. Augustine	East Coast Railway Hospital	S. G. Wooley, M. D	10	3	2	60	25	Yes	8	C. S	21
	GEORGIA.											
109	Atlanta	Atlanta Hospital	Maude Gulledge, R. N	10	3	3	20	13	No	8	8th grade	18-30
110	do	Elkin-Goldsmith Sanatorium	Jessie M. Candlish, R. N	10	3	3	22	18	No	10	H. S	20
111	do	Grady Memorial Hospital *	Miss A. B. Feebeck, R. N	37	3	6	125					
112	do	Morris Brown College Fair Haven Infirmary	H. R. Bu ier, M. D	22	3	4	10	5	Yes	9	8th grade	18
113	do	St. Joseph's Infirmary	Catherine E. Moran	50	3	4	75	70	No	9	H. S	19,35
114	do	Spelman Seminary McVicar Hospital	Amanda J. Lawson	21	3		30	2	No	8	8th grade	20
115	do	Tabernacle Infirmary *	Martha W. Harris, R. N	45	3	7	75					
116	do	Wesley Memorial Hospital	Mary E. Cloman, R. N	24	3	9	50	40	No	8½	H. S	18
117	Athens	St. Mary's Hospital	Mary Elizabeth Simpson, R. N	4	3		18	10	No	8½	do	18
118	Augusta	Augusta City Hospital	Mary A. Moran, R. N	22	3	2	70	40	No	8	1 year H. S	21
119	do	Lamar Hospital *	Mittie White	12	3	4	60					
120	Brunswick	Brunswick Hospital	Luell C. Meier, R. N	3	3	1	50	10	No	8½	C. S	18-35
121	Griffin	Griffin Hospital	Lilly May Madera	5	3	1	36	10	Yes	8½	H. S	21-35
122	La Grange	La Grange Sanatorium	Daisy O'Donovan Rossa, R. N	3	3		20	15	Yes	12	do	20
123	Macon	Macon Hospital	Margaret J. Moran, R. N	18	3	2	78	45	No	7½	do	21
124	Sandersville	Rawling's Sanitarium *	Annie L. Mills	16	3	5	35					
125	Savannah	Charity Hospital *	Mary W. Long	10	2	4	24					
126	do	Georgia Infirmary	Tola Belle Hastings, R. N	7	2	1	50	38	Yes	11½	8th grade	21
127	do	Oglethorpe Sanatorium	Martha Stone Raines, R. N	16	3		30	25	No	7	H. S	18
128	do	Park View Sanatorium	Clara Alice Mathiack	18	3	3	65	50	No	8	C. S	21-32
129	do	St. Joseph's Hospital	Sisters in charge	15	3	1	100		No	9	do	20
130	do	Savannah Hospital	Mary Blythe Wilson, R. N	14	3	3	60	40	No	9	do	21-35
131	do	Telfair Hospital	Mary Carter Peyton	18	3	3	40	36	No	10	H. S	21-32
132	Valdosta	Union Hospital *	Mary Woolridge	7	3		15					
	IDAHO.											
133	Boise	St. Luke's Hospital	Lillian Long	21	3	6	70	50	No		2 years H. S	21
134	Lewiston	St. Joseph's Hospital	Sister Mary Borgia	8	3		60		No		H. S	21

* Statistics of 1910.

† Abbreviations used: C. S.—Common School. H. S.—High School.

25160°—12——5

NOT BOUND IN BOOK

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	ILLINOIS.											
135	Aurora	Aurora Hospital	Nettie B. Jordan, R. N.	10	2½	....	25	20	No	9	8th grade	20
136	Canton	Graham Hospital	Harriet C. Peck	8	3	....	27	13	No	9	1 year H. S.	20
137	Champaign	Julia F. Burnham Hospital	Mary Margaret Uglow, R. N.	15	3	4	45	22	No	10	H. S.	20-30
138	Chicago	Augustana Hospital	Lila Pickardt, R. N.	93	3	18	200	170	No	9	8th grade	21
139	.....do	Cnicago Hospital*	Mrs. E. B. McWhorter	35	3	14	40	....	....	....	....	....
140	.....do	Chicago Baptist Hospital	Mrs. Julia Barnes Adams, R. N.	28	3	18	78	60	No	8½	H. S.	21
141	.....do	Chicago Homœopathic Hospital	Eleanor C. Gough	15	3	3	50	35	No	9	.....do	21
142	.....do	Chicago Maternity Hospital	Effa V. Davis, M. D.	10	1	5	20	15	Rarely	10	C. S.	18-20
143	.....do	Chicago Policlinic Hospital	Mary C. Stewart, R. N.	40	3	....	75	80	No	10	1 year H. S.	20-35
144	.....do	Chicago Union Hospital*	Martha A. Peppereit, R. N.	25	3	5	55	....	....	....	....	....
145	.....do	Illinois Training School for nurses of the Cook County Hospital.	Helen Scott Hay, R. N.	190	3	48	1,800	1,500	No	9	1 year H. S.	20-35
146	.....do	Englewood Hospital	Emelia Dahlgren	39	3	10	100	90	No	10	H. S.	20
147	.....do	Frances E. Willard Hospital	Mary Ford Talcott, R. N.	35	3	8	70	55	No	9	2 years H. S.	20-35
148	.....do	Garfield Park Hospital	H. P. Stiles, M. D.	20	3	5	45	40	No	10	1 year H. S.	20
149	.....do	German Hospital of Chicago	Nina Dale, R. N.	26	3	8	75	60	No	9	.....do	20
150	.....do	German American Hospital*	Anna T. Schering	25	3	6	60	....	....	....	....	....
151	.....do	Grace Hospital*	Edna Locke Hamilton	20	2	9	40	....	....	....	....	....
152	.....do	Hahnemann Hospital	Grace E. Ward, R. N.	44	3	6	112	60	No	9½	C. S.	22
153	.....do	Jefferson Park Polyclinic and Hospital*	Lillian E. Saul, R. N.	29	3	17	40	....	....	....	....	....
154	.....do	Lakeside Hospital	Caroline Soellner, R. N.	28	3	8	60	....	No	10	1 year H. S.	20
155	.....do	Lake View Hospital	Edith Mayon	11	3	3	20	16	No	9	.....do	20
156	.....do	Mary Thompson Hospital	Addie R. Mullin, R. N.	18	3	7	93	50	No	....	H. S.	20
157	.....do	Mercy Hospital	Sister Mary Rita, R. N.	106	3	37	250	15	No	9	2 years H. S.	21-30
158	.....do	Michael Reese Hospital	....	....	3	36	400	300	No	8½	H. S.	21-35
159	.....do	Norwegian Lutheran Deaconess Home and Hospital.	Deaconess Malinda Munson	25	3	6	100	75	Rarely	12	C. S.	18
160	.....do	Norwegian Tabitha Hospital	Bella Olsen	20	3	10	45	35	No	9	.....do	20
161	.....do	Passavant Memorial Hospital	Eliza C. Glenn, R. N.	32	3	7	70	....	No	....	2 years H. S.	20-35
162	.....do	Peoples' Hospital	I. Clark Gary, M. D.	4	2	1	50	25	No	8	C. S.	20-35
163	.....do	Presbyterian Hospital	M. Helena McMillan, R. N.	110	3½	25	200	184	No	8	H. S.	20-30
164	.....do	Provident Hospital	Jeannette S. Lyon	21	3	9	65	35	No	8½	.....do	20-27
165	.....do	Ravenswood Hospital	Sidney K. Appel, R. N.	24	3	1	50	39	No	8½	2 years H. S.	20

166	.....do	Rhodes Avenue Hospital*	Helen W. O'Malley	30	3	10	70							
167	.....do	St. Bernard's Hotel Dieu	Sister Alice Burna	48	3	8	200	110	No	9	1 year H. S.	20-30		
168	.....do	St. Elizabeth's Hospital*	Sister Engratia	30	3	3	250							
169	.....do	St. Joseph's Hospital	Sister Camilla	47	3	6	127	95	No	10	C. S.	21-30		
170	.....do	St. Luke's Hospital	Margaret E. Johnstone, R. N	125	3	23	340	250	No	8½	H. S.	20-31		
171	.....do	St. Mary of Nazareth Hospital	Sister Ambrosia Krygier	42	3	12	160	10-15	No	9	1 year H. S.	21-35		
172	.....do	South Chicago Hospital*	Sylva Bell	16	3	5	50							
173	.....do	Streeter Hospital	Mildred R. Winans	14	3	4	28		No	9	H. S.	21		
174	.....do	Swedish Covenant Hospital	Katrine Fiske	15	3	6	45	25	No	8	1 year H. S.	20-35		
175	.....do	Washington Park Hospital	Frances Regenia Wilson, R. N.	40	3	6	75	60	No	9	.....do	20		
176	.....do	Wesley Hospital	Bertha L. Knapp, R. N.	100	3	23	265	160	No	9	H. S.	20-30		
177	.....do	West Side Hospital	Bertha E. Brunneman	46	3	12	100	65	No	9	.....do	20		
178	Danville	Lake View Hospital	Maud Northwood, R. N.	14	3	5	45	33	No	12	1 year H. S.	20-30		
179	Dixon	Dixon Public Hospital	N. Elizabeth Casey	10	3	5	21	18	No	9	2 years H. S.	18-30		
180	East St. Louis	Henrietta Hospital	Mrs. Rose P. Mitchell	10	3	2	50	35	No	8	H. S.	21-30		
181	Elgin	Sherman Hospital	C. Irene Olney, R. N.	20	3	9	40	30	No	9	1 year H. S.	20-32		
182	Evanston	Evanston Hospital	Helen L. Bloomfield, R. N.	28	3	5	75	60	No	9	.....do	20-35		
183	Freeport	Globe Hospital	Annie R. Pengfily	8	3	...	25	22	No	10		20-35		
184	Galesburg	Galesburg Hospital	Louise Eggert	28	3	7	85	46	No	9	H. S.	20		
185	Jacksonville	Passavant Memorial Hospital	Ida B. Venner	16	3	4	50	30	No	9	1 year H. S.	20-35		
186	Joliet	Silver Cross Hospital	Rachel Tanner	10	3	3	50	35	No	12	H. S.	21-35		
187	Macomb	Marietta Phelps Hospital	Rowena H. Raymond, R. N.	12	2	4	24	15	No	9	.....do	20		
188	Moline	Moline Public Hospital*	Margaret Rooney	16	3	...	60							
189	Monmouth	Monmouth Hospital	E. Proctor, R. N.	11	2½	4			No	9	H. S.	20-30		
190	Murphysboro	St. Andrew's Hospital*	Sister Mary Walburger	2	3	3	35							
191	Normal	Brokaw Hospital*	Lula J. Justis	20	3	8	60							
192	Oak Park	Oak Park Hospital	Sister St. Laurence	75	3	6	50	44	No	9	H. S.	20-30		
193	Ottawa	John Stuart Reyburn Memorial Hospital	Elizabeth Ann Asseltine	12	3	...	25	16	No	8½	1 year H. S.	20		
194	Peoria	John C. Proctor Hospital*	Lucy Breen	38	3	10	90							
195	Quincy	Blessing Hospital	Florence Burt, R. N.	18	3	8	75	30	No	9	.....do	20		
196	Rockport	Rockport City Hospital*	Elizabeth Knight Smith	25	2	8	50							
197	Rock Island	St. Anthony's Hospital*	Anna T. Legris	12	2½	2	45							
198	Springfield	St. John's Hospital	Sister Benedictes	38	2½	11	220	9-10	No	9	8th grade	18		
199	.....do	Springfield Hospital*	Rosa Waltke	19	3	7	70							
200	Waukegan	Jane McAlister Hospital	Martha J. Heil, R. N.	8	3	...	42	33	No	12	1 year H. S.	20		
	INDIANA.													
201	Crawfordsville	L. L. Culver Union Hospital	Mabel R. Van Auker	5	2	2	15	9	No	9	H. S.	20		
202	Elkhart	Elkhart Training School of the Clark Hospital	Agnes E. Moloney	9	.....	3	15	12	Yes	9	1 year H. S.	19-30		
203	Evansville	Crescent Sanitarium	W. Pfeifer	8	3	...	15	12	Yes	12	H. S.	21		
204	.....do	Evansville Sanitarium	Elizabeth Hannan	15	3	...	25	20	No	10	.....do	20-32		
205	.....do	Mary Jane Gilbert Memorial Hospital*	Blanche Pyne	9	3	...	20							
206	.....do	St. Mary's Hospital	Sister Zoe	25	3	10	125	80	Yes	8	C. S.	18		
207	Fort Wayne	Hope Hospital	Laura R. Logan, B. A.	30	3	10	60	45	No	8	1 year H. S.	20-35		
208	.....do	Lutheran Hospital	Mary B. Ludy	35	3	11	75	65	No	9	8th grade	19		
209	Indianapolis	Indianapolis City Hospital	Florence J. Martin, R. N.	50	3	18	293	211	No	9	C. S.	21		
210	.....do	Joseph Eastman's Hospital	Mary Gertrude Hearn, R. N.	8	2	3	16	10	Yes	10	H. S.	21		
211	.....do	Dr. W. B. Fletcher's Sanatorium	Urbana Spink	25	3	7	50	40	No	12	8th grade	18		
212	.....do	Methodist Episcopal Hospital	Jessie A. Hern, R. N.	40	3	14	65	60	No	9	1 year H. S.	21-35		
213	.....do	Protestant Deaconess Hospital	Selina S. Segerlund	56	3	13	126	96	No	9	8th grade	21		

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	INDIANA—continued.											
214	Indianapolis	St. Vincent's Hospital *	Sister Margaret	37	3	11	135					
215	Jeffersonville	Jeffersonville City Hospital	Mary King	5	2	2	12	5	Yes	8	8th grade	20
216	La Fayette	Home Hospital	Fanny Elizabeth Knecht, R. N.	15	3	2	45	25	No	9	H. S.	21–35
217	....do	Wabash Valley Sanitarium	F. A. Loop, M. D.	18	3	1	30	25	Yes	10	8th grade	20–35
218	Lebanon	Williams Hospital	Olive H. Goin	5	3	3	10	4	Yes	9	H. S.	18–25
219	Madison	Denny's Sanitarium	George E. Denny, M. D.	4	2	2	20	10	Yes	12	C. S.	19
220	....do	King's Daughters' Hospital	Laura Belle Roser	3	2	1	10	5	Yes	10	....do	18–21
221	Marion	Grant County Hospital	Marion Whitten	10	3	2	22	16	Yes	9	8th grade	20
222	Muncie	Home Hospital	Bernetha M. Smith, R. N.	3	2	1	20	8	No	9	H. S.	19
223	Richmond	Reid Memorial Hospital	Mary B. Sollers	14	3	6	65	35	No	8½	....do	20
224	South Bend	Epworth Hospital	Edith E. Willis, R. N.	20	3	2	50	30	Rarely	9	....do	21–35
225	....do	Lewis Hospital *	Margaret K. Lewis	3	2½	2	25					
226	Terre Haute	Union Hospital	Ethel L. Chisholm, R. N.	20	3	3	60	40	No	9	C. S.	20–32
227	Valparaiso	Christian Hospital	Mrs. Nora Woodruff	10	2½	4	25	10	Yes	10	H. S.	20–30
228	Vincennes	Good Samaritan Hospital	Minnie E. Haman	6	2	2	20	12	Yes	10	....do	21
	IOWA.											
229	Boone	Eleanor Moore Hospital	Mary Elizabeth Good	8	3	3	30	10	Yes	8	H. S	21–35
230	Burlington	Burlington Hospital	Miss C. C. Keeler	22	3	5	65	45	Yes	10	8th grade	20
231	Cedar Rapids	Mercy Hospital *	Sister Mary Alphonsus	20	3	2	70					
232	....do	St. Luke's Hospital	Grace E. Baker	25	3	4	65	40	No	10	8th grade	20
233	Centerville	St. Joseph's Mercy Hospital *	Sister Mary Evangelista	6	3		28					
234	Clinton	Agatha Hospital	Marietta Tanner	21	3	4	50	40	No	8	H. S	18
235	....do	St. Joseph's Mercy Hospital	Rev. Mother M. Pius	19	3	6	50			9	....do	20
236	....do	James Edmundson Memorial Hospital	Ella M. Stimbach	23	3	5	55	33	No	12	....do	21–30
237	Council Bluffs	Mercy Hospital	Sister Mary Thomas, R. N.	25	3	10	150	75	Yes	9	8th grade	20
238	....do	....do	Sister Mary Alphonsus	30	3	7	100		No	10	H. S	21–30
239	Davenport	....do	Martha Oaks	15	3	4	45	25		10	....do	21–35
240	....do	St. Luke's Hospital	Millicent Schoar	65	3	10	145	110	No	9	1 year H. S	19–35
241	Des Moines	Iowa Methodist Hospital	Sister Mary Mechtildes	45	3	10	100	90	No	9	8th grade	19–35
242	....do	Mercy Hospital	Alice E. Isaacson, R. N.	24	3	7	50	30	No	8½	1 year H. S	20–30
243	Dubuque	Finley Hospital	Sister Mary Ursula	40	3	4	220		No	10	C. S.	19–30
244	....do	St. Joseph's Mercy Hospital										

THIS PAGE
VERTICA

244	Iowa City	Iowa State University Hospital *	Mary E. Nesbit	56	3	7	125			9	1 year H. S.		
245	....do	University Homeopathic Hospital	Anna C. Goodale	12	3	4	30	20	Yes	Yes	7-9	C. S.	20
246	Iowa Falls	Ellsworth Hospital	Margaret Stoddard	3	3		15	6	Yes				
247	Keokuk	W. C. Graham Protestant Hospital *	Mary C. Jackson, R. N	10	3	2	35			10	H. S.		24
248	....do	St. Joseph's Hospital	Sister Superior	13	3	4	150		Yes				
249	Lyons	St. Joseph's Mercy Hospital *	Sister Mary Louis	20	3	3	80						
250	Marshalltown	Mercy Hospital	Sister M. Dorothy	8	3	4	30		Yes	9½	1 year H. S.		18-25
251	Mason City	City Park Hospital *	Helen Gill	7	3		25						
252	Muscatine	Benjamin Hershey Memorial Hospital	M. Grace McIlvary	8	3		25	13	Yes	9	H. S.		20
253	Nevada	Iowa Sanitarium	C. W. Heald, M. D	21	3	6	40	33	Yes	6-10	8th grade		18-35
254	Ottumwa	Ottumwa Hospital *	Elizabeth Trotter	12	3	5	50						
255	Sioux City	German Lutheran Hospital	Dorothy Fick	18	3	5	44	30	No	8	H. S.		20
256	....do	St. Joseph's Mercy Hospital *	Sister Mary Daniel	55	3	14	100						
257	....do	Samaritan Hospital *	Nellie M. Porter	31	3	9	65						
258	Waterloo	Synodical Presbyterian Hospital	Aurilla J. Perry	18	3	7	36	29	No	9	H. S.		18-35
		KANSAS.											
259	Ellsworth	Ellsworth Hospital	Henry Z. Hissem, M. D	4	2	3	15	4	Yes	12			19
260	Kansas City	Methodist Training School of the Bethany Hospital.	Elizabeth J. Eason	25	3	5	50	30	Yes	9	H. S.		20-35
			Frances M. Williams	5	2		20		Yes	10	....do		20
261	....do	Douglass Hospital	Laura Hostetter	6	3		20	10	Yes	10	....do		20
262	Lawrence	Lawrence Hospital	Almey C. Murray	9	2	3	75	25	Yes	8	8th grade		20
263	Leavenworth	Cushing Hospital	Sister Mary Rita	10	3	2	60		Yes	10	H. S.		21
264	....do	St. John's Hospital	Sister M. Alphonsus	8	2	3	40	25		9¼	....do		19
265	Pittsburg	Mount Carmel Hospital	Minerva Wilson, R. N	13	3	4	25	20	No	9	....do		20-30
266	Rosedale	University of Kansas	Lydia M. O'Donnell	4	3		31	7	Yes	9	C. S.		20-35
267	Selma	St. Barnabas' Hospital	Alice Muriel Gaggs, R. N	35	3	8	85	56	No	9	H. S.		21-32
268	Topeka	Christ's Hospital	Theresa Smith	16	3	4	50	33	Yes	8½	....do		20-35
269	....do	Jane C. Stormont Hospital	Isabel M. Woodburn	22	2½	7	75	50	No	10½	1 year H. S.		21
270	Wichita	Wichita Hospital											
		KENTUCKY.											
271	Dayton	Speers Memorial Hospital *	Sophia Steinhauer	21	3	8	75			9	1 year H. S.		20-35
272	Franklin	Southern Kentucky Sanatorium	Flora Keen, R. N	6	3	1	20	15					
273	Henderson	City Hospital *	Sarah J. Barnett	6	3	3	20						
274	....do	Letcher Hospital *	Katherine M. Shaw	4	3		12						
275	Lexington	Good Samaritan Hospital *	Mary R. Shaver	38	3	7	100						
276	Louisville	Children's Free Hospital	Katherine M. Arnold	10	3	1	50	35	No	9	H. S.		20-35
277	....do	Citizens National Hospital	E. A. Jackson	6	3	2	12	4	Yes		8th grade		18
278	....do	German Methodist Deaconess Home and Hospital.	Elizabeth Borcherding	17	2	10	33	30	No	10	C. S.		19-35
			Katherine Daum, R. N	8	3		60						
279	....do	Jewish Hospital *	Nellie Gillette	34	3	10	100	50	No	9	C. S.		20
280	....do	John N. Norton Memorial Infirmary	Elina Johnson	28	3	13	250						
281	....do	Louisville City Hospital *	Petra F. Pinn	6	3	1	12						
282	....do	Red Cross Sanitarium *	Ella Green Davis	6	3	1	25						
283	Owensboro	Owensboro City Hospital *											

* Statistics of 1910.

[1] Abbreviations used: C. S. = Common school. H. S. = High school.

BOUND IN BOOK

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	LOUISIANA.											
284	Alexandria	Alexandria Sanitarium	J. L. Wilson, M. D	4	2	1	20	8	Rarely	12	G. S	18
285	New Orleans	Charity Hospital *	Sister Dolores	128	2	39	1,050					
286	do	Hotel Dieu	Sister Mary Grace	30	3	6	60	54	No	10½	C. S	20
287	do	Sarah Goodridge Hospital	R. T. Fuller, M. D	8	3	4	16	12	Yes	7	8th grade	18
288	do	Touro Infirmary	E. K. Zeller	60	3	15	160	130	No	9	C. S	21-35
289	Shreveport	T.E.Schumpert Memorial Sanitarium	Sister Mary Raphael	28	2½	8	200	115	No	10	C. S	20-35
290	do	Shreveport Charity Hospital	J. M. Callaway, M. D	22	2	2	200		No	11	H. S	21
	MAINE.											
291	Augusta	Augusta General Hospital	Mrs. Sarah Hayden	20	3	2	58		Yes	9	do	22-35
292	Bangor	Eastern Maine General Hospital	Ida Washburne	35	3		120	85	No	9		23-35
293	Biddeford	Trull Hospital	Lucy Jeannette Potter, R. N	24	3		50	25	Yes	11	H. S	23
294	Lewiston	Central Maine General Hospital	Rachel A. Metcalfe	33	2½	8	75	60	No	10	do	21
295	do	St. Mary's General Hospital	Sister Campeau	20	2½	6	140	85	Yes	8–9	do	21
296	Portland	Children's Hospital	Helen L. Redfern	24	2½	5	70	64	No	9½	do	20-30
297	do	Dr. King's Private Hospital	Minerva Kenrick	9	3	2	28		No		do	21-35
298	do	Maine Eye and Ear Infirmary	Nellie M. Pine	18	3	3	75	38	No	9	do	21-28
299	do	Maine General Hospital	Harriet M. Hohenfeld, R. N	55	3	20	175	108	No	8	do	21
300	do	St. Barnabas' Hospital	Maud B. Rooney	75	3	25	80	21	No	12	do	21
301	Rockland	Knox County Hospital	Margaret D. Sibley	6	2½	1	25	10	No	9	do	21-31
	MARYLAND.											
302	Baltimore	Biedler-Sellman Hospital	Pearle A. Beuling, R. N	14	3	3	125		No	8½	do	21
303	do	Church Home and Infirmary	Edith R. Bennett	46	3	11	185	135		10	do	21
304	do	Franklin Square Hospital	Florence E. Garner, R. N	16	3	3	90	48	No	9	do	20-35
305	do	Robert Garrett Hospital for Children	Sarah F. Martin, R. N	10	2–3	3	32	21	No	12½		
306	do	Hebrew Hospital	Mary Belle Struble, R. N	24	3	6	100	90	No	10	C. S	19-33
307	do	Hospital for the Women of Maryland	Frances K. M. Butler	6	3		59	41	No		H. S	22
308	do	Johns Hopkins Hospital	Elsie M. Lawler, R. N	139	3	35	360	307	No		do	22-35
309	do	Maryland Homœopathic Hospital	Mary J. Putts	20	3	5	65	43	No	10	do	20-35
310	do	Maryland General Hospital	A. E. Wheeler	34	3	9	150	130	No	10½	8th grade	21

THIS PAGE I
VERTICAL I

311	.....do.....	Mercy Hospital	Sister Mary Claude Raden, R. N.	66	3	18	300	275	No.....	9	H. S.....	22-30
312	.....do.....	Provident Hospital*	Annabel Wilson	6	3	1	25					
313	.....do.....	St. Agnes's Hospital*	Sister M. Lama	38	2,3	5	255					
314	.....do.....	St. Joseph's German Hospital	Sisters of St. Francis	42	3	7	234	170	No.....	8	H. S.....	20-32
315	.....do.....	Union Protestant Infirmary*	Roberta L. Ball	45	3	14	110	80	No.....	9-9½	1 year H. S....	22-35
316	.....do.....	University Hospital	Alice F. Bell	75	3	17	253	200	No.....	9	.....do.....	20
317	Cumberland	Allegany Hospital	Sister Angelica	15	3	2	40	25	No.....	9	2 years H. S..	21-27
318	.....do.....	Western Maryland Hospital*	Florence A. Tanney	20	3	2	52					
319	Frederick	Frederick City Hospital	Mary Loose Nies	8	3	2	50	30	No.....	10	H. S.....	20-35
320	Hagerstown	Washington County Hospital	Emma M. Glover	10	3	3	22	15	Yes.....	9	.....do.....	20-30
321	Salisbury	Peninsula General Hospital*	Mary Francis Sheil, R. N.	14	3	3	150					
	MASSACHUSETTS.											
322	Attleborough	Attleborough Sanitarium*	Mary B. Nicola	15	3		75					
323	Beverly	Beverly Hospital Corporation	Alice C. S. Cushman, R. N.	16	2½	2	50	30	No.....	9	H. S.....	21-35
324	Boston (Jamaica Plain)	Adams Nervine Asylum	Susan E. Tracy	19	2½	4	52	50	No.....	10	.....do.....	21-30
325	Boston	City Hospital	Emma M. Nichols, R. N.		3	39	1,061		No.....	9	C. S.....	23-35
326	Boston (South Boston)	Carney Hospital	Sister Marciana	67	3	25	200		Yes.....	8	H. S.....	21-32
327	Boston	Charitable Eye and Ear Infirmary	Mary Carnahan	4-6	2		210	150	No.....	9½		
328	.....do.....	Children's Hospital	Sister Margaret	8-12	3	10	100	70	No.....	8	H. S.....	21
329	.....do.....	Cushing Hospital	Olga Cushing Leary, M. D.	15	2	5	30	24	No.....	10	.....do.....	21
330	.....do.....	Emerson Hospital	Frances W. Cockburn, R. N.	30	3	8	48	28	Yes.....	10	.....do.....	21-30
331	Boston (Jamaica Plain)	Faulkner Hospital	Alice K. Ruggles	13	3	5	30	18	No.....	9½	.....do.....	21
332	Boston	Massachusetts General Hospital	Sara E. Parsons, R. N.	140	3	34	322	303	No.....	8	.....do.....	19-36
333	.....do.....	Massachusetts Homœopathic Hospital	Alice H. Flash	100	3	30	350	251	No.....	9	.....do.....	21-30
334	.....do.....	Long Island Hospital	Charles F. Donlan, M. D.	37	2	13	319	304	No.....	11	C. S.....	21-30
335	.....do.....	Lying-in Hospital	Jean C. Cartwright	23	1½		46	38	No.....	10		23-35
336	.....do.....	New England Baptist Hospital	Emma A. Anderson	25	2½	8	50	40	Yes.....	10		
337	.....do.....	New England Deaconess Hospital	Adeliza A. Betts, R. N.	28	3	11	50	43	Yes.....	9	H. S.....	21-32
338	.....do.....	New England Hospital for Women and Children.	Jane Merwin Barker, R. N.	31	3	13	150	78	No.....	9	.....do.....	21
339	.....do.....	Plymouth Hospital	Cornelius N. Garland, M. D.	12	3	4	15		Yes.....	6	C. S.....	19-35
340	.....do.....	St. Elizabeth's Hospital	Thomas F. Harrington, M. D.	26	3	6	110	66	Rarely..	10	H. S.....	
341	.....do.....	Woman's Charity Club Hospital	Eva M. Moore	14	2	8	30		No.....	8	C. S.....	21
342	Brockton	Brockton Hospital	Grace B. Beattie, R. N.	20	2½		50	39	No.....	9	H. S.....	21-30
343	Cambridge	Cambridge Hospital	Nellie G. Partridge	23	2½		60	37	No.....	9	.....do.....	21-35
344	Chelsea	Rufus S. Frost General Hospital	Agnes Alice du Brau	14	3		60	35	No.....	9	.....do.....	22-35
345	Clinton	Clinton Hospital	Winifred Leslie Stevens	17	3	4	30	28	Yes.....	9	1 year H. S...	21-35
346	Everett	Whidden Memorial Hospital	Hannah F. Searcy	9	3	2	22	10	Yes.....	9	C. S.....	21-35
347	Fall River	Union Hospital	Anna E. E. Rothrock, R. N.	28	2½	11	80	40	Yes.....	9	8th grade....	21
348	Fitchburg	Burbank Hospital	Freeman A. Tower, M. D.	20	2½	6	50	44	Yes.....	8½	H. S.....	21-33
349	Gloucester	Addison Gilbert Hospital	Deta H. Kinney, R. N.	13	3	3	30	19	Yes.....	8½	C. S.....	21
350	Greenfield	Franklin County Hospital	Anna M. Sweeney	14	2	3	46	16	No.....	9-10	C. S.....	21
351	Haverhill	Hale Hospital*	Anne Charlotte Parker	14	3	5	35					
352	Holyoke	City Hospital	Laura S. Pratt	30	3	13	80	64	No.....	9	1 year H. S...	21
353	.....do.....	House of Providence Hospital	Mother Mary of Providence	24	3		70		No.....		C. S.....	21-35
354	Lawrence	Lawrence General Hospital	Martha P. Parker	33	3	10	100		Rarely..	8	H. S.....	22
355	Lowell	Lowell Hospital Association	Cora J. Simpson	17	2	8	85	34	No.....	11	.....do.....	21-30
356	.....do.....	Lowell General Hospital	Sara A. Bowen, R. N.	25	3	8	70	43	No.....	8½	.....do.....	20

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	MASSACHUSETTS—con.											
357	Lowell	St. John's Hospital	Sister Celine	21	3	3	65	45	No	9	1 year H. S.	22–35
358	Lynn	Lynn Hospital	Annie I. Fletcher, R. N.	25	2		80		No	11	C. S.	21–35
359	do	Union Hospital	Julia Agnes Smith, R. N.	19	3	6	35	30	Yes	9	H. S.	21–35
360	Malden	Malden Hospital	Charlotte M. Perry, R. N.	27	3	4	80	43	No	9	1 year H. S.	21–35
361	Melrose	Melrose Hospital	Alma E. Grant	13	3	4	19	14	Yes	9	H. S.	21–35
362	do	New England Sanitarium	William E. Bliss, M. D.	41	3	11	80		Yes	8	1 year H. S.	20
363	Montague City	Farren Memorial Hospital*	Sister Mary Immaculate Heart	8	2	2	30					
364	Natick	Leonard Morse Hospital	N. J. van Cor	14	3	5	25	15	Yes	10	1 year H. S.	21
365	New Bedford	Emergency Hospital	Charles Arthur Derby, M. D.	6	2		20	17	Yes	9½	H. S.	21
366	Newburyport	Anna Jacques Hospital	Brenda F. Mattice	15	2½	4	40	25	No	12	8th grade	23
367	do	Newburyport Homœopathic Hospital	Clara B. Peck, R. N.	14	3	3	30	18	Yes	10	H. S.	21–30
368	Newton Lower Falls	Newton Hospital*	Mary M. Riddle	65	3	21	165					
369	North Adams	North Adams Hospital*	Lillian A. Hanford, R. N.	17	2½	9	65					
370	Northampton	Dickinson Hospital	Mary Rose Raser	32	3	8	100	80	Yes	12	H. S.	21–30
371	Pittsfield	Henry W. Bishop, Third, Memorial Training School of the House of Mercy Hospital.	Mary M. Marcy, R. N.	56	3	13	130	74	No	9½	C. S.	20
372	Plymouth	Jordan Hospital*	Emma Margaret Smith	9	2½		20					
373	Quincy	City Hospital of Quincy*	B. M. Thayer	10	2	3	50					
374	Salem	Salem Hospital	Caroline Brown Wilks	26	2½	5	100		No	10	H. S.	21–35
375	Somerville	Somerville Hospital	Elizabeth C. Hogle	20	3	6	40	26	Yes	10½	1 year H. S.	22–35
376	South Framingham	Framingham Hospital	Ethel Humphrey, R. N.	41	3	2	50	30	Yes	9½	H. S.	20–35
377	Springfield	Mercy Hospital	Mother Mary of Providence	29	3	7	150	7	No	10	1 year H. S.	21–30
378	do	Springfield Hospital	Jessie E. Colton	45	3	11	100	88	No	10	H. S.	20–23
379	do	Wesson Memorial Hospital	Hilda M. Boyd	34	3	11	60	30	Yes	9	do	21
380	Taunton	Taunton Hospital Co. Training School of the Morton Hospital.	Jennie S. Berry, R. N.	12	3	4	25	16	No	9	do	21–35
381	do	Taunton Emergency Hospital*	Charles B. Learoyd, M. D.	3	2		15					
382	Waltham	Waltham Hospital	Beatrice de Veber	92	4	14	100	80	Yes	9	C. S.	19–35
383	Westfield	Noble Hospital	Nellie B. Hall	13	3	2	55	27	No	8½	do	21
384	Woburn	Choate Memorial Hospital	Grace B. Hanckley	8	2½		20	15	Yes	9	H. S.	20–35
385	Worcester	Worcester City Hospital	Louise Eleanor Keister	110	3	34	200	210	No	9	do	20–30
386	do	Hahnemann Hospital	Edith Robbins, R. N.	12	3	1	25	14	Yes	10	do	25
387	do	Memorial Hospital	Donna G. Burgar	67	3		150		No	9	1 year H. S.	20–35
388	do	St. Vincent Hospital	Mother Mary Providence	28	3	8	110	85	No	10	H. S.	21–35

THIS PAGE VERTICA

	MICHIGAN.												
389	Alma	Brainerd Hospital	I. N. Brainerd, M. D.	5	2	3	15	4	Yes	12	C. S.		18
390	Ann Arbor	University Hospital	Luella Bristol	75	2	19	300	240	No	10	H. S.		20-32
391	....do	University Homœopathic Hospital	D. W. Myers, M. D.	40	3	9	100	85	Yes	10	....do		21-35
392	....do	Peterson's Hospital	Fantine Pemberton	10	4	3	0		No	9	....do		19
393	Battle Creek	Battle Creek Sanitarium and Hospital *	Mrs. M. S. Foy	180	3	41	650			9	H. S.		18-21
394	....do	Nichols Memorial Hospital	Maud Agnes Cline, R. N	14	3	6	46	28	Yes	9	....do		21
395	Bay City	Mercy Hospital	Sister Mary Baptist	20	3	7	100	40	No	9½	1 year H. S.		19-30
396	Benton Harbor	Mercy Hospital	Millicent B. Northway, R. N.	9	2½	4	27	12	No	8	8th grade		20-30
397	Big Rapids	Mercy Hospital	Sister Mary Philomena McDonald.	15	3	4	100	35	Yes	8			
398	Calumet	Calumet and Hecla Hospital *	Lisle Freligh	10	3	2	25						
399	Detroit	Boulevard Sanitarium	Miss Hulme, R. N	14	3				Yes	10			21-35
400	....do	Grace Hospital *	C. P. van der Water	62	3	9	150						
401	....do	M. Ferrand Training School of the Harper Hospital.		84	3	35	200	191		8	2 years H. S.		22
402	....do	Red Cross Hospital	Lottie Chambers	4	2	2	24	12	Yes	10	H. S.		18-35
403	....do	St. Mary's Hospital	Sister Lucina	50	3	15	200	15	No	10	C. S.		20-30
404	....do	Solvay General Hospital	Melvina M. Malhiot	14	3	4	50	24	Yes	9	8th grade		20-35
405	....do	Woman's Hospital and Infants' Home	Miss S. Melville	21	¼	4	100	70	No	8	H. S.		21-35
406	Grand Rapids	Butterworth Hospital	Elizabeth G. Flaws, R. N.	45	3	14	100	70	No	9	1 year H. S.		21
407	....do	St. Mary's Hospital	Sister M. Thomas	20	3	4	45		Yes	10	H. S.		21
408	....do	Union Benevolent Association Hospital	Ida M. Barrett, R. N	40	3	10	70	59	No	9	....do		21-35
409	Jackson	Jackson City Hospital	Margaret M. Moore	17	3	3	50	27	No	10	C. S.		21
410	Kalamazoo	St. Caroline's Training School of the Borgess Hospital.*	Sister M. Raphael, M. D	12	3	5	125						
411	....do	Bronson Hospital	Irene v. B. van Pelt	23	3	10	45	25	No	9½	1 year H. S.		20-30
412	Lake Linden	Lake Superior General Hospital *	Zetta De Witt	8	3	2	30						
413	Lansing	Lansing Hospital *	Mabel L. Morgan	19	2½	3	25						
414	Laurium	Houghton County Training School of the Calumet Public Hospital.	Nettie L. Lester, R. N	8	3	2	25	10	Yes	12	H. S.		21
415	Ludington	Paulina Stearns Hospital *	Nellie E. Dart	8	2½	4	16						
416	Manistee	Mercy Hospital *	Sister M. Camillus	14	3	3	75						
417	Marquette	St. Luke's Hospital	Mrs. Clara L. Mack	7	2	2	26		No	10	H. S.		20
418	Mount Clemens	St. Joseph's Sanitarium *	Sister M. Bertha	14	5	3	100						
419	Muskegon	Hackley Hospital	Elizabeth A. Greener, R. N	20	3	9	60	37	No	9	2 years H. S.		20
420	....do	Mercy Hospital	Sister M. Joseph, R. N	47	3	3	42	25	Yes	10	H. S.		18
421	Petoskey	Lockwood Hospital	Mary R. de Boer	4	2½	1	18	12	No	8½	2 years H. S.		21
422	Port Huron	Port Huron Hospital	Elizabeth McClaskie	12	2	4	34	17	No	12	H. S.		19
423	Saginaw	St. Mary's Hospital	Sisters of Charity	27	3	9	90	65	No	8			
424	....do	Saginaw General Hospital	Ida E. Proctor		3	3	50	28	No	10	1 year H. S.		20-35
425	....do	Woman's Hospital *	Ida M. Tracy	12	2½	4	22						
426	Sault Ste. Marie	Sault Ste. Marie Hospital	Rosa Thomas	9	2		34	15	Yes	10	3 years H. S.		20-30
427	Trimountain	Copper Range Hospital	Colina MacDonald	4	3	1	30	15	Yes	8	....do		20
	MINNESOTA.												
428	Brainerd	Northern Pacific Benevolent Association Hospital.	Maude Isabel Manning	17	3	4	87	50	Yes	9+	2 years H. S.		21
429	Crookston	Bethesda Hospital *	Deaconess Ovidia Olson	5	2	2	30						

* Statistics of 1910.

† Abbreviations used: C. S.=Common school. H. S.=High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	MINNESOTA—contd.											
430	Duluth	St. Luke's Hospital *	Frances E. Smith, R. N.	30	3	7	100					
431	Fergus Falls	George B. Wright Memorial Hospital *	Eva M. F. Bratton, R. N.	14	2	3	27					
432	....do	St. Luke's Hospital	Sister Marie Olson	10	2	3	38	25	Rarely	10	8th grade	20
433	Minneapolis	Abbott Hospital	Susan Holmes	12	2	4	30		No	10	H. S	21–31
434	....do	Asbury Methodist Deaconess Hospital	Amy Allison	42	3	14	103	75		9	C. S	23–35
435	....do	Maternity Hospital *	Martha G. Ripley, M. D.	12	1	4	58					
436	....do	Minneapolis City Hospital	Francis E. Morley	42	3	12	250	195	No	9	8th grade	21
437	....do	Northwestern Hospital *	Grace Watson	41	3	6	90					
438	....do	Norwegian Lutheran Deaconess Hospital.*	Sister Superior Lena Wilson	20	3	4	90					
439	....do	St. Barnabas' Hospital *	Grace H. Cameron, R. N.	35	3	10	90					
440	....do	St. Mary's Hospital *	Sister Mildred	30	3	10	100					
441	....do	Swedish Hospital	Elizabeth Peterson	47	3	11	150	110		8–9	1 year H. S	21
442	....do	University of Minnesota	Louise M. Powell	16	3		52	48	No	8	H. S	20–35
443	Moorhead	Darrow Hospital	Daniel C. Darrow, M. D.	5	3	1	30		Yes	10	C. S	20
444	Princeton	Northwestern Hospital	Frances S. Cooney	8	2	1	25	20	No	8	H. S	18
445	Red Wing	St. John's Hospital	Hannah Keller	12	3	4	50	27	Yes	9	8th grade	21–35
446	St. Paul	Bethesda Hospital and Deaconess Home *	Sister Elenora Slattengren	10	3	6	120					
447	....do	City and County Hospital *	Mrs. Frances D. Campbell	85	3	14	600					
448	....do	Cobb Hospital	Lydia H. Keller, R. N.	8	3	2	18	14	No	8	8th grade	21
449	....do	Luther Hospital	Sylvia Thorgrimsen, R. N.	15	3	4	45	30	No	10		20–30
450	....do	St. Joseph's Hospital	Sister Bernardine	80	3	24	150	108	No	8	H. S	19–35
451	....do	St. Luke's Hospital	Margaret A. Crowl, R. N.	44	3	11	100		No	10	....do	21–35
452	Stillwater	Stillwater Hospital	Mrs. Harriet G. Knapp	7	2	3	25	12	Yes	9	....do	18
453	Warren	Warren Hospital	Mrs. A. C. Greene	7	2	5	25	22	Rarely	10	C. S	21–34
454	Winona	Winona General Hospital	Elizabeth D. Davis, R. N.	18	2	9	52	31	No	8	8th grade	20–30
	MISSISSIPPI.											
455	Alcorn	Alcorn Agricultural and Mechanical College.*	R. A. Gordon, M. D.	12	3	2	12					
456	Gulfport	King's Daughters' Hospital *	Elizabeth A. Leuley	7	2		24					
457	Jackson	Jackson Sanitorium		8	2	2	40	15	Rarely	8	H. S	21
458	Natchez	Natchez Charity Hospital	Emma May Henning	22	3		180	120	Yes	10½	....do	18–35
459	Vicksburg	Mississippi State Charity Hospital	Marian J. Parks	20	24	11	190		Yes	9½	C. S	18–30
460	....do	Vicksburg Infirmary *	M. L. Godbolt	12	2	5	30					

THIS PAGE IS VERTICAL

	MISSOURI.												
461	Columbia	Parker Memorial Hospital Training School for Nurses of the University of Missouri.	Dora B. Battson, R. N.	11	3	5	31	16	Yes	9	H. S.		20
462	Hannibal	Levering Hospital	Maude Landis	14	2¼	6	35	20	Yes	9½	C. S.		20–35
463	Joplin	St. John's Hospital	Elizabeth Lyda O'Shea, R. N.	9	3		40		Rarely	10	8th grade		18
464	Kansas City	General Hospital	Harriet Leck, R. N	40	3	18	350	300	No	8	1 year H. S.		19–32
465	do	German Hospital	Anne M. Casey	15	2¼	4	65	33	No	8½			20–35
466	do	St. Joseph's Hospital	Reverend Mother Agnes Gonzaga Ryan.	50	3	12	110	95	No	9	8th grade		21–30
467	do	St. Luke's Hospital	L. Eleanor Keely	13	3	3	25	18	No	9	do		21–30
468	do	South Side Hospital*	K. McDonald	16	3	2	32						
469	do	University Hospital*	Fanny E. S. Smith	36	3	13	52						
470	do	Wesley Hospital	Myra Messinger	28	3	6	75	60	No	9	C. S.		22–30
471	St. Joseph	Deaconess Home and Hospital Association	Ethel Hastings	33	3	8	75	51	No	9	H. S.		20
472	do	St. Joseph's Hospital		21	3	6	101		Yes	10	C. S.		18–30
473	do	Bethesda Hospital	Edward W. Saunders, M. D.	22	3	10	70		Yes	8–12	do		19–32
474	St. Louis	Centenary Hospital*	Mary Eloise Welsh	28	3	5	75						
475	do	Christian Hospital*	Clara B. Sharpe	14	3	2	50						
476	do	Deaconess Hospital	Sister Magdalena Gerhold	8	3		90	85					
477	do	Jewish Hospital	Jessie R. Chisholm, R. N.	40	3	11	100	60	No	9	H. S.		21–35
478	do	Lutheran Hospital*	Ida Gerding	34	3	10	96						
479	do	Mayfield Sanitarium	W. H. Mayfield, M. D.	18	3	4	75	50	Yes	9	C. S.		19
480	do	Mission Baptist Sanitarium*	Francis S. Neal	42	3	9	150						
481	do	Provident Hospital*	A. A. Craddock, M. D	4	3	1	16						
482	do	Rebekah Hospital*	Elizabeth M. Gill	25	3	8	70						
483	do	St. Anthony's Hospital	Henry Schwarz, M. D.	18	3		100		No	10	C. S.		17–27
484	do	St. John's Hospital	Sister Mary Aloysius	22	3	6	80	67	No	10	do		20–35
485	do	St. Louis Baptist Hospital Association	C. C. Morris, M. D	18	3	3	75		Yes	10	8th grade		20–35
486	do	St. Louis City Hospital	M. Annie Gillis, R. N	45	2	15	500	425	No	10	C. S.		21–33
487	do	St. Louis (Mullanphy) Training School of St. Louis Hospital Association.	Sister Gabriella Lynch	30	3	8	150		No	10	do		20–30
488	do	St. Luke's Hospital	Theodosia Manwell	41	3	13	92	56	No	9–9½	1 year H. S.		23–35
489	do	Washington University	Menia S. Tye	41	3	6	200	86–90	No	10	8th grade		18–30
	MONTANA.												
490	Butte	Murray Hospital	Della H. Folger, R. N.	22	2½	8	75	50	No	9	do		20–30
491	do	St. James' Hospital*	Sisters in charge	27	3	2	110						
492	Great Falls	Columbus Hospital	Sister Gaspard	21	3	8	202	80	Yes	8	1 year H. S.		18
493	do	Montana Deaconess Hospital	E. Augusta Ariss	18	3	8	68		Yes	9	H. S.		22
494	Helena	St. John's Hospital*	Sister Mary Coletta	20	2½	6	50						
495	Missoula	St. Patrick's Hospital	Sister Aldric	18	2½	3	160	50	No	10	8th grade		19–30
	NEBRASKA.												
496	Beatrice	Beatrice Sanitarium	C. P. Fall	4	2		20	8	Yes	9	H. S.		21
497	College View	Nebraska Sanitarium	Orville Rockwell, M. D.	22	3	3	75	50	Rarely	8	1 year H. S.		20
498	Fremont	Fremont Hospital*	Anna Douglas	18	2	5	40						
499	Kearney	Kearney Public Hospital*	Sylvia D. McKinney	10	2		24						
500	Lincoln	Dr. Benjamin F. Bailey Sanitorium Company	Anna M. Trippe, R. N.	26	2	11	54	50	No	10	8th grade		20–30

*Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

E BOUND
, IN BOOK

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training.	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	NEBRASKA—contd.											
501	Lincoln	Nebraska Orthopædic Hospital*	Bessie M. Bixby, R. N.	11	2	5	65					
502	....do	Sun Light Sanitarium*	Minnie van der Flute	15	2	4	42					
503	Omaha	Clarkson Hospital	Ellen Stewart	36	3	6	80	64	No	8½	H. S	21–30
504	....do	Creighton Memorial, St. Joseph's Hospital*	Sister M. Hedwig	7	2		200					
505	....do	Douglas County Hospital*	Mabel Christie	14	2	5	300					
506	....do	Immanuel Hospital*	Deaconess Anna Flint	17	3	4	65					
507	....do	Nebraska Methodist Episcopal Hospital and Deaconess Home School for the Training of Nurses.	Victoria Anderson	50	3		100	80	Rarely	9	H. S	21–35
508	....do	Omaha General Hospital	Mary C. Wieck	24	3	6	80	45	No	10	C. S	20
509	....do	Presbyterian Hospital*	J. E. Graham	22	3	4	50					
510	....do	Swedish Mission Hospital	Hilda Christine Fleetwood, R. N.	16	3		45	20		8	C. S	21
511	....da	Wise Memorial Hospital	Ida B. Hulette	34	3	12	65		No	8	H. S	20–35
512	South Omada	South Omaha Hospital	Leila Halverson	8	2	3	21	18	Yes	9½	8th grade	21
	NEW HAMPSHIRE.											
513	Claremont	Claremont General Hospital	Nellie A. Steere	11	2	7	25	18	Yes	9½	H. S	20–35
514	Concord	Margaret Pillsbury General Hospital	Irene Bowers	17	2½		60	30	Yes	9	1 year H. S	21–35
515	....do	New Hampshire Memorial Hospital for Women and Children.	Rosanna O'Donoghue	10	2½		25	18	Yes	9	H. S	21–33
516	Dover	Wentworth Hospital	Grace P. Haskell, R. N	14	2½	4	40	25	No	9	....do	21–35
517	Exeter	Exeter Cottage Hospital	Henrietta B. Chisholm, R. N	10	3		25	15	Yes	9	C. S	20
518	Hanover	Mary Hitchcock Memorial Hospital	Ida Frances Shepard, R. N	21	3	6	36	37	Rarely	10	1 year H. S	21–35
519	Keene	Elliot City Hospital*	Ella McCobb	23	2½	7	30					
520	Laconia	Laconia Hospital Association	Eva Wood, R. N	7	2	4	25		No	9	1 year H. S	21–35
521	Manchester	Elliot Hospital	Nellie M. Harding, R. N	18	3	4	40	21	No	10	H. S	21–35
522	....do	Sacred Heart Hospital	Mother M. Regis	16	3	2	60	45	No	9	8th grade	21–30
523	Nashua	St. Joseph's Hospital	Sister M. C. Masselean	16	2½	6	60	29	Rarely	9	....do	20
524	....do	Nashua Hospital Association	Elizabeth E. Heinemann, R.N.	14	2½		25	20	Yes	8		21
525	Whitefield	Morrison Hospital	M. S. McIntire	16	3		26	10	Yes	10	H. S	20
526	Woodsville	Woodsville Cottage Hospital	Eliza Wheaton	9	3	1	26	8	Yes	10½	....do	20–22

THIS PAGE B
VERTICAL IN

	NEW JERSEY.											
527	Atlantic City	Atlantic City Hospital	Nannette S. Burkhard	10	3	7	150	80	Yes	12	do	21
528	Bayonne	Bayonne City Hospital *	Della M. Fletcher, R. N	14	2	3	38					
529	Bridgeton	Bridgeton Hospital	Dorothy M. Ferree	8	2	3	30	12	Yes	12	C. S.	20-35
530	Camden	Cooper Hospital	Frances Allen Worrall	35	3	7	125		No	10	1 year H. S.	20-30
531	do	West Jersey Homœopathic Dispensary and Hospital Association.	C. E. MacNichols	13	3	3	40	35	Rarely	10	C. S.	21-35
532	Elizabeth	Elizabeth General Hospital and Dispensary	Mary Reynolds Herrmann	39	3	9	130	75	Yes	9	do	21-30
533	Englewood	Englewood Hospital	Eleanor E. Hamilton, R. N	18	3		56	30	Rarely	9	2 years H. S.	21-23
534	Hackensack	Hackensack Hospital	Mary J. Stone	12	2		60	40	No	12	1 year H. S.	21
535	Jersey City	Christ Hospital	Edith A. Hooper, R. N	35	3	12	102	90	No	9	C. S.	22
536	Long Branch	Monmouth Memorial Hospital	Margaret J. Herries	30	2½	7	120	75	No	8	H. S.	22
537	Montclair	Mountainside Hospital	Harriet T. Meiklejohn	27	3	8	86	45	Rarely	9	1 year H. S.	20-35
538	Morristown	Morristown Memorial Hospital	Eliza McKnight	16	2½	5	74	54	No	9	do	20
539	Newark	Homœopathic Hospital of Essex County, N. J	Nina R. Wilcox	23	2½	8	50	25	Rarely	10	2 years H. S.	20-35
540	do	Newark Beth Israel Hospital	Hilda Fischer	26	3	7	90	75	No	10	C. S.	18-30
541	do	Newark City Hospital	Mary Frances Mason	76	3	23	320	306	No	9	H. S.	20-32
542	do	Newark German Hospital	Wilhelmine Kobbelöer	19	3	9	75	58	No	9	2 years H. S.	21-35
543	do	Hospital of St. Barnabas	Augusta Hobart English, R.N.	24	3	6	84	67	No	9	1 year H. S.	22
544	do	St. James' Hospital	Elizabeth Conroy	21	3	8	75		No	11		21
545	Orange	Orange Memorial Hospital	Grace Elizabeth Stamp	35	3	13	128	83	No	9	C. S.	21
546	Passaic	Passaic General Hospital	Margaret A. Wallace	18	3	7	70	50	No	12	1 year H. S.	20-30
547	do	St. Mary's Hospital	Margaret S. Wilson	16	3	4	50	40	No	11	C. S.	18
548	Paterson	Paterson General Hospital *	Eva A. Castle	36	3	10	125					
549	do	St. Joseph's Hospital	Anna M. Flanigan	40	3	11	150	100	Yes		H. S.	21
550	Perth Amboy	Perth Amboy City Hospital	Beatrice M. Bamber	6	3		20	20	No	10½	C. S.	20
551	Plainfield	Muhlenberg Hospital	Josephine Hughes, R. N	21	3	4	57	44	No	9	1 year H. S.	20-35
552	Trenton	William McKinley Memorial Hospital	Laura M. Weber	18	3	6	75	50	No	9	do	20-35
553	do	Mercer Hospital	Alice A. Gemmill	20	3	4	76	60	No	9½	C. S.	20-35
554	do	St. Francis' Hospital	Loretta T. Harrity	30	3	6			No	11	H. S.	18-35
555	Weehawken	North Hudson Hospital	Kate L. B. Tulley	14	2½	6	42	33	No	10	do	20-26
	NEW MEXICO.											
556	Albuquerque	St. Joseph's Hospital	Sister Philip Neri	14	3	6	100	60	Yes			18-30
	NEW YORK.											
557	Albany	Albany Hospital	Susan C. Hearle	110	3	11	350	235	No	10	2 years H. S.	21
558	do	Homœopathic Hospital of Albany, N. Y	Rose M. Heavren, R. N	29	3	5	90	64	No	9	1 year H. S.	20-35
559	do	St. Peter's Hospital	Sister May Philomena	32	3	9	103	90	No	9	do	21
560	Amsterdam	Amsterdam City Hospital	Helen M. Garrett, R. N	11	2½	2	50	19	No	9	do	21
561	Auburn	Auburn City Hospital	Florence M. Grant	26	3	5	100	63	No	9	C. S.	21
562	Binghamton	Binghamton City Hospital *	Margaret Bryden	20	3	6	64					
563	Brooklyn	Bethany Deaconess Hospital	Myrtha Binder	4	3		34	25	No	8	C. S.	21-35
564	do	Brooklyn Eastern District Dispensary and Hospital.	Margaret T. Herlihy, R. N	12	2½	2	44	34	No	8	1 year H. S.	21-30
565	do	Brooklyn Hospital	Mrs. Margaret L. Rogers, A. R. R. N.	44	3	9	196	124	No	9½	do	20-30

* Statistics of 1910.

[1] Abbreviations used: C. S.—Common school. H. S.—High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	NEW YORK—contd.											
566	Brooklyn	Jewett Training School for Nurses of the Bushwick Hospital.	Jane S. Buchanan, R. N.	12	3	1	32	23	Yes	9	1 year H.S.	20-30
567	do	Cumberland Street Hospital	Rebecca Taylor, R. N.	23	2½	9	200	150	No	9	2 years H.S.	21-35
568	do	German Hospital	Ella B. Kurtz, R. N.	29	3	9	146	100	No	10	1 year H.S.	20
569	do	Jewish Hospital of Brooklyn	Anna M. Sabol	46	2½	11	250	213	No	8	do	19
570	do	King's County Hospital	Isabel Burrows, R. N.	65	2½	25	710	600	No	8	do	21-35
571	do	Long Island College Hospital	Mary H. Bodine, R. N.	55	3	14	275	208	No	9	do	21-31
572	do	Memorial Hospital for Women and Children*		9	2½	2						
573	do	Methodist Episcopal Hospital	A. S. Kavanagh, D. D.	80	2½	24	225	175	Rarely	10	1 year H.S.	21-35
574	do	New York State School for Training Nurses of the Prospect Heights Hospital and Brooklyn Maternity.	Gertrude M. Gibson, R. N.	29	2½	9	50	45	No	8½	do	21-35
575	do	St. John's Hospital	Helen Lawrie Smith, R. N.	31	3	10	80	56	No	9	do	21
576	do	St. John's Long Island City Hospital	Caroline Marques, R. N.	36	2½	7	225	150	No	9	do	20-30
577	do	St. Mary's General Hospital	M. Lavinia Copeland, R. N.	53	3	25	270	200	Yes	10	do	20-33
578	do	Williamsburgh Hospital	Stella Fuchs, R. N.	20	2½	3	65		No	10	do	21-35
579	Buffalo	Buffalo General Hospital	Miss R. Morley, R. N.	87	3	20	365	250	No	12	do	21-35
580	do	Buffalo Hospital of Sisters of Charity	Sister Vincent	60	3	21	250	141	No	10	do	20-30
581	do	Buffalo German Hospital	Cornelia L. Sleck	25	3	11	74	64	No	9	do	21
582	do	Buffalo Homœopathic Hospital	Anna L. Alline, R. N.	33	3	3	117		No	8	do	20
583	do	Buffalo Woman's Hospital	Mrs. Harriet D. Stone	16	3	2	35	29	No	9	do	20-35
584	do	Children's Hospital	Mrs. Evangeline Nye	30	3	9	85	61	No	9	2 years H.S.	20-30
585	do	City Hospital*	Agnes R. Dottenveich	5	2½	2	25					
586	do	Emergency Hospital of Sisters of Charity and St. Mary's Maternity Hospital.	Sister Louise May	21	3	2	80	60	No	8,9	1 year H.S.	20-30
587	do	Erie County Hospital	Nellie Davis	47	3	16	450	425	No	8	do	20
588	do	German Hospital	Ada Dean	13	3	1	72	51	No	10	do	21-35
589	do	La Fayette General Hospital and State Hospital	Kate Beator	6	3	1	35	30	Yes	8	do	20-35
590	do	Lexington Heights Hospital	Alta E. Phillips	10	3	3	24	8	No	9	H. S.	23
591	Canandaigua	Canandaigua Hospital of Physicians and Surgeons.	E. Luella Morrison, R. N.	10	3	5	50	18	Yes	9	1 year H.S.	21
592	do	Frederick Ferris Thompson Hospital	R. Elizabeth Bidmead, R. N.	17	2½	6	55	34	No	9	do	19-30

THIS PAGE E
VERTICAL II

594	Cohoes	Cohoes Hospital	Mrs. Elizabeth P. Alvis	14	3	3	60	30	No	10	do	20
595	Cooperstown	Thanksgiving Hospital	Deborah M. Caldwell, R. N	8	2	4	50	20	No	9	do	19
596	Corning	Corning Hospital	Josephine E. Thurlow	11	2½	...	27	16	No	9–10	do	20–34
597	Cortland	Cortland County Hospital	Elizabeth MacDill	...	2	5	54	...	No	9	do	21–35
598	Dansville	Jackson Sanatorium	Alma McCumber, R. N	16	3	6	175	...	No	9	do	21–34
599	Dunkirk	Brooks Memorial Hospital	Maude E. Hagar, R. N	10	3	2	40	20	No	9	do	20
600	Elmira	Arnot-Ogden Memorial Hospital	Grace R. D. Kinney	18	2	7	80	45	No	9	H.S	20–35
601	Geneva	Geneva City Hospital	L. Alice Chambers, R. N	11	2½	7	53	16	No	9	do	21–35
602	Glens Falls	Glens Falls Hospital	G. Leta Card, R. N	17	3	1	75	35	No	9	1 year H.S	21–32
603	Gloversville	Nathan Littauer Hospital	Ida M. Root, R. N	11	3	1	50	29	No	9	do	21–25
604	Hudson	Hudson City Hospital	Ruth Gardner Clark, R. N	12	2½	3	32	20	Yes	9	do	20–35
605	Jamestown	Woman's Christian Association Hospital	Nettie A. Romans	21	3	7	65	46	Yes	9	do	21–35
606	Kingston	City of Kingston Hospital	Mary Amelia Cecelia Moore, R. N.	8	3	2	30	...	No	10	C.S	20–25
607	Little Falls	Little Falls Hospital	Mary E. Morrell, R. N	9	2½	1	25	13	No	10	1 year H.S	21
608	Lockport	Lockport City Hospital	Vera de Mille Eaton, R. N	11	3	...	25	19	Yes	9	do	18–35
609	Middletown	Thrall Hospital	Harriett Southworth, R. N	12	3	4	43	28	Rarely	9	do	21–35
610	Mineola	Nassau Hospital	Adah H. Adams	24	3	5	70	50	No	11	H.S	18–35
611	Montour Falls	Bethesda Sanitarium*	Loretta L. Clawson	6	2	...	35	...	...	...	...	...
612	Mount Vernon	Mount Vernon Hospital	Mary A. Land, R. N	14	3	4	32	24	No	9	1 year H.S	20–35
613	Newburgh	St. Luke's Hospital	Sara S. Henry, R. N	24	2½	9	75	45	No	10	do	20
614	New York	Bellevue and Allied Hospitals	Clara D. Noyes, R. N	144	2½	46	1,223	1,113	No	10	do	21
615	do	Beth Israel Hospital	Sarah Carr Sharp	33	2	18	134	120	No	9	C.S	21–33
616	do	Flower Hospital	Harriette E. Wildey	40	3	13	140	120	No	9	1 year H.S	21
617	New York (Flushing)	Flushing Hospital and Dispensary	Florence L. Wetmore, R. N	20	3	4	60	...	No	10	do	19–35
618	New York	French Benevolent Society Hospital	Minnie Hinks Jordan, R. N	24	2½	9	115	75	No	9	2 years H. S	21–33
619	do	German Hospital and Dispensary	Anna L. Schulze, R. N	23	3	21	256	239	No	11	1 year H. S	21–35
620	do	Hahnemann Hospital	Alice I. Twitchell, R. N	35	3	9	100	66	No	9	do	20–30
621	do	Italian Hospital of the Borough of Manhattan	Anna Marion Beadle, R. N	16	2	5	48	41	No	9	do	19–35
622	New York (Jamaica)	Jamaica Hospital	Eldora H. Ward, R. N	9	3	...	55	35	No	8½	do	19
623	New York	Laura Franklin Free Hospital for Children	Frances L. Lurkins, R. N	20	2½	8	60	67	No	10	do	18–32
624	do	Lebanon Hospital	Josephine C. Schreyer, R. N	54	3	16	192	165	No	9	do	21–35
625	do	Lincoln Hospital and Home	Alice E. Pierson, R. N	48	3	10	425	379	No	11	do	21–35
626	do	Lozier Memorial Training School for Nurses of the New York Medical College and Hospital for Women.	Juel A. Dillon, R. N	25	3	....	50	45	No	9	do	21
627	do	New York City Training School for Nurses of the City, Maternity, and Gouverneur Hospitals.	Jane M. Pindell, R. N	90	2½	42	935	852	No	10	do	21–35
628	do	Metropolitan Hospital	Agnes S. Ward, R. N	78	3	31	1,545	1,480	No	9–10	do	20–35
629	do	Misericordia Hospital	Sister Marie, R. N	25	2½	...	300	150	No	8–9	do	20
630	do	Mount Sinai Hospital	Anne T. Van Kirk	165	3	49	500	430	No	9½	C. S	21
631	do	New York Foundling Hospital*	Sister Teresa Vincent	40	2	18	100	...	...	...	...	...
632	do	New York Hospital	Adeline Henderson, R. N	92	2	35	250	225	No	8½	C. S	33–33
633	do	New York Infirmary for Women and Children	Sarah C. Olmsted, R. N	27	2½	12	98	...	No	9	do	22–33
634	do	Margaret Fahnestock School for the Training of Nurses of the New York Post-Graduate Medical School and Hospital.	Susan E. Emmott, R. N	100	3	29	225	180	No	10	1 year H. S	23–33

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	NEW YORK—continued.											
635	New York	Presbyterian Hospital	Anna C. Maxwell	113	3	25	233	214	No	8½	H. S.	22–35
636	do	Roosevelt Hospital	Isabel D. Richmond	63	2½	30	254	190	No	8½	2 years H. S.	23–33
637	do	St. Luke's Hospital	Mrs. C. E. Bath	125	3	29	310	290	No	9	H. S.	22–33
638	do	St. Mark's Hospital of New York City	Mrs. L. Graham Williams, R. N.	31	5	3	70	70	Yes	8½	1 year H. S.	20–30
639	do	St. Mary's Free Hospital for Children	Sister Esther Clement	24	2½	12	122	90	No	9	do	19–28
640	do	St. Vincent's Hospital	Catherine A. Sanborn, R. N.	92	3	24	382	322	No	10	do	21–33
641	New York (Borough of Richmond).	do	Julia A. Sheehan, R. N	23	3	7	72	60	No	9	do	19–30
642	New York (Tompkinsville).	S. R. Smith Infirmary	M. R. Pratt, M. D	40	3	18	150	100	No	9	H. S.	21
643	New York	Sydenham Post-Graduate Course Hospital	Olga Sandell, R. N.	33	3	9	85	68	No	9	1 year H. S.	21–35
644	do	Washington Heights Hospital	Marcia E. Martyn	10	2½	1	35	20	No	9	do	19–30
645	do	Woman's Infirmary and Maternity Home.*	Mahlon E. Swarts, M. D	13	3	10	6					
646	do	Yorkville Hospital *	Margaret E. McCormack	4	2		28					
647	Niagara Falls	Niagara Falls Memorial Hospital *	Irene M. Johnson	30	3	6	90					
648	Ogdensburg	Mary Immaculate School for the Training of Nurses of the City Hospital.	Sister Mary Florence, R. N.	20	3	4	65	60	No	10	1 year H. S.	18–25
649	Olean	Olean General Hospital	Caroline M. Wilson, R. N.	7	3	2	15	12	No	10	H. S.	20–30
650	Oneida	Broad Street Hospital	Alice A. Dougall, R. N.	6	3	2	30	13	No	9	1 year H. S.	18
651	Oneonta	Amelia Osborn Memorial Hospital	Eva Caddy	7	2½	1	25	15	No	10	do	20–35
652	Ossining	Ossining Hospital	Elizabeth Lounsbery	9	2	3	30		Yes	10		20–30
653	Oswego	Oswego Hospital	Mary MacPhee, R. N	18	3	1	60	33	No	9	1 year H. S.	20
654	Peekskill	Peekskill Hospital	Marion D. Lingenfelter, R. N.	10	2½	3	50		Yes	9	do	19–30
655	Poughkeepsie	Vassar Brothers' Hospital	Claribel A. Wheeler, R. N.	24	3	3	65	50	No	7	do	20
656	Rochester	Graham Highland Park Sanatorium and Maternity Hospital.	C. T. Graham, M. E., M. D.	11	3	2	45	30	No	10	do	18
657	do	Hahnemann Hospital of Rochester	Mary B. Curtice	35	3	8	115	85	No	10	do	18–30
658	do	Lee Private Hospital	Laura F. Lewis, R. N.	18	3		51	46	Yes	10	do	
659	do	Rochester General Hospital	Mary L. Keith, R. N	61	3	26	140	103	No	8½	do	20–30
660	do	Rochester Homœopathic Hospital	Jessica S. Heal, R. N.	54	3	12	144	105	No	8½	do	20
661	do	St. Mary's Hospital	Sister Clementine	20	3	8	200	125	No	10	do	21
662	Rome	Rome Hospital	Arvilla E. Everingham, R. N.	12	3	3	30	16	Yes	8–0	do	20
663	Saratoga Springs	Saratoga Hospital	Catherine Lawrence	13	3	5	60	22	No	10	do	19–35

THIS PAGE IS VERTICAL

664	Schenectady	Ellis Hospital—Schenectady Hospital Association.	Esther T. Jackson, R. N.		3	8	100	59	No	9	do	20
665	do	Schenectady Physicians' Hospital										
666	Syracuse	Hospital of the Good Shepherd	Julia E. Littlefield, R. N.	10	3	9	26	21	No	9	do	21
667	do	St. Joseph's Hospital	Edith W. Seymour, R. N.	71	3	26	186	114	No	8	do	18–35
668	do	Syracuse Homœopathic Hospital	Esther G. McCarty	30	3½	9	130		Yes	9	H. S.	21–30
669	do	Syracuse Hospital for Women and Children	Louise R. Sherwood, R. N.	16	3	4	44	36	No	10	1 year H. S.	21
670	Troy	Samaritan Hospital	Laura A. Slee	38	3	7	162	86	No	9	do	21
671	do	Troy Hospital	Louise F. Arnold, R. N.	36	3	8	125	100	No	9	1 year H. S.	20–25
672	Utica	Faxton Hospital	Sister Annie Keenan	37	3	14	115	100	No	10	do	20
673	do	St. Luke's Home and Hospital	Florence Struthers, R. N.	27	3	8	60	35	No	9	do	20–33
674	do	Utica General Hospital	Ruth Pentland, R. N.	30	3	10	80	65	No	10	C. S.	20
675	do	Utica Homœopathic Hospital	Anna O'Neil	16	3	6	75	50	No	9	1 year H. S.	21
676	Watertown	Home of the Good Samaritan *	Caroline Evans, R. N.	10	3	2	20	12	No	9	H. S.	20
677	do	St. Joachim's Hospital	Mrs. Lucy R. Joy, R. N.	16	2½	7	50					
678	White Plains	White Plains Hospital Association	Sister M. Stella Maris, R. N.	20	2½	7	60	35	No	9	1 year H. S.	
679	Yonkers	Cochran Training School for Nurses of the St. John's Riverside Hospital.	Ida Nudell, R. N.	15	3	6	50	30	No	12	do	21
			M. E. Wood, R. N.	36	3	11	78	59	No	9	do	21–35
680	do	St. Joseph's Hospital *										
681	do	Yonkers Homœopathic Hospital	Letitia E. Shaughnessy, R. N.	22	2½	10	75					
			Marion McLimont	17	3	6	70	20	No	12	1 year H. S.	18
		NORTH CAROLINA.										
682	Asheville	Dr. Carroll's Sanitarium										
683	do	Asheville Mission Hospital *	Miss S. A. Wilson	17	3	3	50	35	Yes	9½	do	19
684	Biltmore	Clarence Barker Memorial Hospital and Dispensary.	Mary Perkins Laxton	24	3	4	60					
			M. H. Trist	8	3		18	10	Rarely	10	C. S.	21
685	Caroleen	Caroleen Hospital										
686	Charlotte	Good Samaritan Hospital	Amanda T. Harrill	3	3		15	5	No	10	H. S.	20–30
687	do	Presbyterian Hospital *	C. M. Strong, M. D.	5	3	3	16	12				
688	do	St. Peter's Hospital *	Ella H. McNichols	20	3	4	45					
689	Durham	Lincoln Hospital	Mary A. Cordner	19	3		50					
690	Greensboro	St. Leo's Hospital	A. M. Moore, M. D.	10	2		40	20	Yes	8½	C. S.	20
691	Laurinburg	James Sanatorium	Sisters of Charity	25	3	6	100	60	Yes	12	H. S.	20–30
692	Lincolnton	Lincoln Hospital *	Mrs. L. D. James, R. N.	8	3	1	60	15	Yes	12	do	21
693	Lumberton	Thompson Hospital *	Radiant F. Sistare	4	3	3	12					
694	Morganton	Grace Hospital	Mrs. Effie R. Hatfeld	6	3	1	15					
695	Raleigh	Rex Hospital	Maria Purdon Allen, R. N.	4	3		22	9				
696	do	St. Agnes' Hospital *		15	3	4	48		Yes	8½		18
697	Salisbury	Whitehead-Stokes Sanatorium *	Dr. Catharine P. Hayden	13	2	4	52			10	H. S.	21
698	Sanford	Central Carolina Hospital	Ella Price Smith, R. N.	20	3½	5	50					
699	Statesville	Statesville Nurses' Training School Company of the Long's Private Sanatorium.*	Mabel A. Wallace	6	3	1	17		Yes	10	C. S.	18
			Anne Ferguson	8	3	1	25					
700	Tarboro	Pittman Hospital										
701	Washington	Washington Hospital	Mattie T. Shackleford	4	3		30		Yes	9	C. S.	20–30
702	do	S. R. Fowle Memorial Hospital *	Martha Jean MacDonald	12	3	4	30	18	Yes	10	C. S.	20
703	West Durham	Watts Hospital	Isabella Patterson	8	3	1	30					
704	Wilmington	James Walker Memorial Hospital	Mary L. Wyche	30	3	5	105		Yes		H. S.	20
705	Wilson	Wilson Sanatorium *	Mildred Diana Hatch, R. N.	21	3	7	75	47	No	9	1 year H. S.	21–30
706	Winston-Salem	Twin City Hospital *	Ada E. Allen	10	3	3	26					
			L. Eugenia Henderson, R. N.	11	3	3	30					

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

GOVERNMENT PRINTING OFFICE 1912 BOOK

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	NORTH DAKOTA.											
707	Fargo	St. John's Hospital *	Sister Madeleine	23	3	6	72	.....	.....	.....	.....	.....
708	Grand Forks	Grand Forks Deaconess Hospital *		11	3	4	55	.....	.....	.....	.....	.....
709	....do	St. Michael's Hospital *	Sister Leocardia	16	3	1	60	.....	.....	.....	.....	.....
710	Jamestown	City Hospital *	Maude H. Sides	5	2	3	15	.....	.....	.....	.....	.....
711	Northwood	Northwood Deaconess Hospital	Deaconess Mildred Olson	10	2	5	30	13	Yes	10	C. S.	18-30
	OHIO.											
712	Akron	City Hospital of Akron	Marie Anna Lawson	25	3	5	80	76	No	9	H. S.	21-35
713	Alliance	Alliance City Hospital *	Sara B. Franklin	8	3	2	18	.....	.....	.....	.....	.....
714	Ashtabula	Ashtabula General Hospital	Agnes Jane Stark, R. N	13	3	2	38	.....	Rarely	9	H. S.	20-34
715	Canton	Aultman Memorial Hospital	Alice N. Hemmingway	14	3	4	60	.....	Yes	12	1 year H. S.	21-30
716	Cincinnati	Bethesda Hospital	Louise Golder	24	2,3	9	85	61	No	10	C. S.	20
717	....do	The Christ Hospital	Alice Thatcher	54	3	14	120	85	No	8	H. S.	20-30
718	....do	Cincinnati Hospital	Olive Fisher	72	3	26	500	.....	No	9	....do	21-30
719	....do	Episcopal Hospital for Children	D. Schenck	10	1½	5	66	50	Yes	10	C. S.	18-30
720	....do	Good Samaritan Hospital *	Sister Mary Cyril	26	3	1	78	.....	.....	.....	.....	.....
721	....do	Jewish Hospital	Mary H. Greenwood	33	3	8	125	80	No	9	H. S.	21
722	....do	Ohio Hospital for Women and Children	Laura Ball	3	3	1	19	8	Yes	9½	....do	21
723	....do	Ohio Maternity Hospital Training School of the German Deaconess Hospital.	Sister Albertine	10	2	2	25	.....	Yes	10	8th grade	20-35
724	Cleveland	Canfield-White Hospital	Florence Nightingale Mailleue	8	2½	3	20	10	Rarely	10	H. S.	22-32
725	....do	Cleveland City Hospital *	Emily M. Gent, R. N	50	3	13	350	.....	.....	.....	.....	.....
726	....do	Cleveland Training School for Nurses of the Huron Road Hospital.	Annie E. Irving	29	2½	5	112	.....	No	10	H. S.	21
727	....do	German Hospital	Marian Czarina Mason, R. N	11	3	3	50	35	No	10	8th grade	21-40
728	....do	Lakeside Hospital	Mary Alexandria Samuel	90	3	30	271	212	No	8	H. S.	21-35
729	....do	Lutheran Hospital	Elise Mannel, R. N	8	2	3	35	20	No	10	C. S.	21
730	....do	Maternity Hospital	Mrs. Anna S. Center	10	1	9	16	.....	No	12	H. S.	25
731	....do	Mt. Sinai Hospital	Sophia M. Folsom	8	2	1	30	25	No	10	C. S.	21
732	....do	St. Clair Hospital *	Miss B. Secord	18	3	5	65	.....	.....	.....	.....	.....
733	....do	St. Luke's Hospital	Frederika K. Gaiser	40	3	11	90	70	No	9	1 year H. S.	21-35
734	....do	St. Vincent's Charity Hospital	Sister M. Marcelline	48	3	16	140	130	No	10	2 years H. S.	20–3
735	Columbus	Grant Hospital	Rachel Bourke	76	3	12	150	150	No	8½	H. S.	21–35

THIS PAGE I
VERTICAL I

736	....do	Hawkes Hospital of Mt. Carmel	Sister Mary Wilfrid	61	3	21	280	100	Yes	11	....do	20–30
737	....do	Lawrence Hospital	Louise Vollmer	8	2½	2	20	15	Yes	8	....do	20–28
738	....do	Mercy Hospital	Mrs. Sue Patterson	8	2½	....	25	15	No	12	C. S.	21–35
739	....do	Protestant Hospital Association	Mrs. H. A. Fenzel	42	2	21	100	70	No	12	H. S.	21
740	Dayton	Miami Valley Hospital	Florence A. Bishop	44	3	14	150	110	No	....	....do	21–35
741	East Liverpool	East Liverpool City Hospital *	Nell Florence Parrish	14	3	8	50	....	....	....	....	....
742	Findlay	Home and Hospital	Charlotte Kerans	11	2	2	40	18	Yes	10	H. S.	21–35
743	Hamilton	Mercy Hospital	Sister Mary Raymond	16	3	....	120	....	No	....	C. S.	20–30
744	Kenton	St. Anthony Training School for Nurses of the Antonio Hospital.	Sister Rose Francis, R. N	6	3	....	25	....	....	....	....	....
745	Lima	Lima Hospital	Margaret B. Mateer	19	2½	6	68	34	No	12	C. S.	20–30
746	Lorain	St. Joseph's Hospital	Sister M. Chrysostom	20	3	....	85	50	Rarely	....	....	20
747	Marion	Ohio Sanatorium Company	Myrta A. Harris	12	3	....	70	45	Yes	10	H. S.	18–30
748	Newark	Newark City Hospital	Ruby Castle Wilson	7	2	....	20	12	No	8½	....do	20
749	Painesville	Painesville Hospital	Blanche Stair, R. N	10	2	3	25	15	Yes	8	C. S.	21–32
750	Ravenna	White Hospital	Wilford W. White, M. D	7	3	2	20	12	No	8	H. S.	19–25
751	Sandusky	Providence Hospital *	Sister Mary Aurelia	9	3	....	29	....	....	....	....	....
752	Springfield	Springfield City Hospital	Mary A. Jamieson	22	10	3	100	55	No	8½	H. S.	21–35
753	Steubenville	Gill Hospital *	Hanna Driscoll	2	3	....	25	....	....	....	....	....
754	Toledo	Lucas County Infirmary Hospital	A. J. Hammer, M. D	7	2	5	75	70	No	9	C. S.	21
755	....do	Maternity Hospital	Lucy A. Lanman	5	1	....	50	32	No	8	H. S.	23–35
756	....do	Robinwood Hospital	Mabel Morrison	20	3	4	100	35	Rarely	10	....do	20–30
757	....do	St. Vincent's Hospital	Sister St. Simon	60	2½	22	175	150	No	9	C. S.	21–30
758	....do	Toledo Hospital	Margaret M. Wallace, R. N	35	2½	5	150	85	No	10	H. S.	21
759	Youngstown	Mahoning Valley Hospital *	Sister Augustine	6	3	2	40	....	....	....	....	....
760	....do	Youngstown Hospital	Cecil L. Schreyer, R. N	....	2½	13	136	116	No	9	1 year H. S.	20–30
761	Zanesville	Bethesda Hospital *	Clara B. Chesbrough	9	2	1	33	....	....	....	....	....
	OKLAHOMA.											
762	Guthrie	Oklahoma Methodist Hospital	Renette Hill	10	3	4	24	15	Yes	9	H. S.	20
763	McAlester	All Saints Hospital	James C. Johnston, M. D	10	3	....	75	35	Yes	9	C. S.	19
764	Mangum	Border Hospital *	Mary Beaumont	4	2	....	12	....	....	....	....	....
765	Shawnee	Shawnee General Hospital	Annie T. Smith	12	2	2	50	15	No	9	8th grade	20
766	Tulsa	Physicians and Surgeons Hospital	Miss McCarty	4	2	....	25	15	No	12	C. S.	20
767	....do	Tulsa Hospital *	Miss H. C. C. Ziegler	12	2½	....	50	....	....	....	....	....
	OREGON.											
768	Portland	Good Samaritan Hospital	Rebecca Maybury Jelly	90	2½	26	250	....	No	9	1 year H. S.	20–33
769	....do	St. Vincent's Hospital	Sister M. Mathilda	71	3	16	375	....	....	10	C. S.	20–30
770	Salem	Salem Hospital	Lillian McNary	12	2	4	50	....	....	9	H. S.	22
771	The Dalles	The Dalles Hospital	Lydia Bottemiller	13	2½	4	75	40	Yes	9	C. S.	20–30
	PENNSYLVANIA.											
772	Allentown	Allentown Hospital	Clara V. Haring	31	2½	9	100	81	No	10½	H. S.	21–35
773	Austin	North Pennsylvania General Hospital	M. Elizabeth Dorchester	5	2	1	27	13	Yes	10	C. S.	21
774	Bellefonte	Bellefonte Hospital	Miss L. S. Bettz	10	3	2	38	26	Yes	10	H. S.	21
775	Bellevue	Suburban General Hospital	Florence A. Blanchfield	6	2½	2	19	15	No	9	C. S.	18–30
776	Bloomsburg	Joseph Ratti Hospital	Sister Mary Pierre Desmond	6	2	4	16	....	No	10	H. S.	18

* Statistics of 1910.

[1] Abbreviations used: C. S. = Common school. H. S. = High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	PENNSYLVANIA—contd.											
777	Braddock	Braddock General Hospital	Ida May Gailey, R. N.	22	3	6	65	45	No	8½–9	C. S.	20–30
778	Bradford	Bradford Hospital	Eliza B. Callender, R. N.	30	3	8	100	68	No	10	do	20
779	Bryn Mawr	Bryn Mawr Hospital	Elizabeth Boone Echman	19	3	3	65	35	No	9	1 year, H. S.	21–33
780	Butler	Butler County General Hospital *	Imogene Palmer	13	3	5	50					
781	Carbondale	Carbondale Emergency Hospital *	Alice Hart	14	2	6	42					
782	Chambersburg	Chambersburg Hospital	Miss M. N. Gable	10	3	1	38	24	Rarely	8–10	C. S.	18–35
783	Chester	Chester Hospital	Mary L. Harper	25	3	5	125	65	No	12	H. S.	21
784	do	J. Lewis Crozer Home for Incurables and Homœopathic Hospital.	Annie O'Bryan	14	3		50		No			
785	Clearfield	Clearfield Hospital *	Jessie M. Durstine	7	3	3	34					
786	Columbia	Columbia Hospital	Lillian F. Wardell, R. N.	8	3	2	36	20	Yes	10	H. S.	19
787	Corry	Corry Hospital	Ida R. Falconer	12	3	4	50	19	Yes	9	1 year, H. S.	21
788	Du Bois	Du Bois Hospital		7	2½	1	22		No	10	C. S.	19–25
789	Easton	Easton Hospital	Sister Marie Sowa	15	3	5	100	68	Yes	8–9	H. S.	21
790	Erie	Hamot Hospital	M. Ella Wickersham	23	3	4	100	61	No	10		21–35
791	do	St. Vincent's Hospital	Sister M. Anita Pariseau	31	3	10	100	67	No	10	8th grade	20–30
792	Fountain Springs	State Hospital for Injured Persons of the Anthracite Coal Regions.	J. C. Biddle, M. D.	29	3	9			Rarely	10	H. S.	19–35
793	Greensburg	Westmoreland Hospital	Estelle V. Fost	15	3		74	51	No	12	8th grade	20–30
794	Harrisburg	Harrisburg Hospital	Clara M. Swank	23	3	4	100	80	No	9	do	20
795	Hazleton	Hazleton State Hospital	Laura J. Allen	16	2½		193		No	9	H. S.	21–35
796	Johnstown	Conemaugh Valley Memorial Hospital *	Jessie L. Greene	32	3	11	120					
797	Kane	Kane Summit Hospital	Mary J. Hays, M. D.	18	3	1	56	23	Yes	10	8th grade	18–35
798	Lancaster	Lancaster General Hospital	Clara Belle Schmehl, R. N.	33	3	9	125	70	Yes	10	H. S.	21–35
799	do	St. Joseph's Hospital	M. Agnes Lowell, R. N.	20	3	4	110	60	Yes		do	21
800	Lebanon	Good Samaritan Hospital	Elizabeth Hanson	7	3		35	18	No	9	1 year, H. S.	20–35
801	Lock Haven	Lock Haven Hospital *	Cornelia W. Happersett	18	3	1	60					
802	McKeesport	McKeesport Hospital	Katherine Dempster, R. N.	34	3	11	150	125	No	9	H. S.	18
803	McKees Rocks	Ohio Valley General Hospital *	Harriet M. Noble	10	3	2	60					
804	Meadville	Meadville City Hospital	Lydia A. Whiton	16	3	6	60	29	No	9	C. S.	19–35
805	do	Spencer Hospital	Sister Emilena Ellis	10	2½	1	40	32	No	8	do	20
806	Mercer	Cottage State Hospital	Elizabeth L. Shea	4	2		37	13	No	9	do	18–30
807	Mount Pleasant	Mount Pleasant Memorial Hospital *	Zula Henneberger	12	3	3	52					

THIS PAGE VERTICAL

808	New Brighton	Beaver Valley General Hospital	Anata Whitmyre	14	3	2	30	30	No	9			21-36
809	New Castle	Shenango Valley Hospital	Lydia MacKinney	21	3	5	100	50	No	9½	H. S		18-30
810	Norristown	Charity Hospital	Miss P. Schneider	12	3	4	56	32	No	12	8th grade		20-35
811	Oil City	Oil City General Hospital *	Emma J. Keating, R. N	20	3	8	60						
812	Philadelphia	Children's Hospital of Philadelphia	Miss F. Virginia Ludekens	30	2½	6	75	60	No	9	8th grade		18-25
813	....do	Children's Homœopathic Hospital	Alice Brownell	20	2½		130	63	No	10	C. S		20
814	Philadelphia (Frankford).	Frankford Hospital	Anna C. Garrett	15	3	6	65	50	No	9½	H. S		20-35
815	Philadelphia	Frederick Douglass Memorial Hospital	Elsie M. Browne	12	2½	4	65	30	Yes	9	....do		21-35
816	....do	German Hospital of Philadelphia	Sister Marie Kolneke	42	3	11	220	180	No				21
817	Philadelphia (Germantown).	Germantown Dispensary and Hospital	Mrs. R. F. W Crossland	36	3	8	150	100	No	9	C. S		21
818	Philadelphia	Gynecean Hospital	Edith Ritter	17	2	8	45	28	No	9	....do		19-30
819	....do	Hahnemann Hospital of Philadelphia	Eva J. Hood	78	3	26	300	150	No	11	H. S		20-32
820	....do	Henry Phipps Institute	A. K. Sutton	10	2	8	26	24	No	9	C. S		21-33
821	....do	Hospital of Women's Homœopathic Association		21	3	5	125	40	Yes	10	....do		20-40
822	....do	Howard Hospital	Anna E. Barrett	22	2	6	89	50	No		H. S		21-35
823	....do	Jefferson Medical College Hospital	Anna E. Laughlin	94	3	41	300	215	No	10	....do		21-35
824	....do	Jewish Hospital of Philadelphia	Susan C. Francis	53	3	16	180	140	No	9	C. S		20-35
825	....do	Kensington Hospital for Women	Harriet E. Parker, R. N	20	2½	7	50	35	No	7-8	H. S		21-35
826	....do	Medico-Chirurgical Hospital	Elizabeth V. Lobb, R. N	70	3	18	210	140	No	9	....do		21
827	....do	Methodist Episcopal Hospital	Alice M. Garrett	40	3	11	125	83	No	9	C. S		21-35
828	....do	Mt. Sinai Hospital	May Cook	16	3	1	65	50	No	10	....do		21
829	....do	Philadelphia Orthopædic Hospital and Infirmary for Nervous Diseases.	Margaret S. Nelson	32	2½	9	126	90	No	9½	H. S		22-32
830	....do	Pennsylvania Hospital	Margaret A. Dunlop	72	3	20	315	230	No	9	1 year H. S		21
831	....do	Philadelphia General Hospital	Nellie May Rennyson	116	3	24	1,700	1,700	No	9½	H. S		21
832	....do	Philadelphia Lying-in Charity Hospital	Carrie C. Tallman, R. N	20	2	12	60	35	Yes	9	C. S		21-35
833	....do	Philadelphia School for Nurses	Lillie Frazier	136	2	39			Yes		....do		18-40
834	....do	Polyclinic Hospital	Miss F. Freese, R. N	30	3	10	100	75	No	9½	H. S		20
835	....do	Presbyterian Hospital	Caroline I. Milne, R. N	58	3	17	230	140	No	9	1 year H. S		21-35
836	....do	Hospital of the Protestant Episcopal Church in Philadelphia.	Katharine Brown, R. N	78	3	20	425	300	No	9½	....do		21-35
837	....do	St. Agnes' Hospital	Katherine Veronica Kane	49	3	6	304		Yes	8½	C. S		21
838	....do	School for the Training of Cadet Nurses of the St. Christopher's Hospital for Children.	Rena P. Fox	20	1½	12	55	40	Yes	9	....do		18-32
839	....do	St. Joseph's Hospital	Sister Elizabeth	61	2,3	21	175	130	No	9	....do		22-35
840	....do	St. Luke's Hospital	Margaret Jones	21	3	9	55	41	No	10	....do		21
841	....do	St. Mary's Hospital	Frances J. Lundy	24	3		185	83	Yes	11	....do		18
842	....do	St. Timothy's Hospital	Eva Simonton, R. N	21	3	4	75	48	No	9	12th grade		18-35
843	....do	Samaritan Hospital	Gertrude H. Lauman, R. N	50	16	3	135	115	No	8-10	H. S		20-35
844	....do	Stetson Hospital of Philadelphia	Lewis S. Somers, M. D	15	3	3	55	30	No	10	....do		21-30
845	....do	Hospital of University of Pennsylvania	Anna Rogers	92	3	1	390		No	10	C. S		21-35
846	....do	West Philadelphia General Homœopathic Hospital.	Juliet Snyder	13	3	4	40	30		9½	H. S		21
847	....do	West Philadelphia Hospital for Women *	Elizabeth Walton Aucker	21	2½	2	50						
848	....do	Woman's Southern Homœopathic Hospital of Philadelphia.	Mary A. Collett	9	2	4	39	26	Yes	8½	1 year H. S		20-30
849	....do	Hospital of the Woman's Medical College of Pennsylvania.*	Anna K. Bitner	15	2½	5	48						

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	PENNSYLVANIA—contd.											
850	Phœnixville	Phœnixville Hospital	Agnes C. Shore	16	2½	7	75	23	No	10	H. S.	21
851	Pittsburgh	Allegheny General Hospital	Gertrude Muldrew, R. N.	97	3	26	325	300	No	9	do	21
852	do	Pittsburgh Training School for Nurses of the Homœopathic Hospital.	Caroline E. Gray, R. N.	52	3	19	150	105	No	10	8th grade	21–35
853	do	Mercy Hospital	Sister M. Etheldreda	84	3	24	610	360	No			
854	do	Passavant Hospital *	Sister Margaret	31	3	9	90					
855	do	Pittsburgh Hospital	Sister Marcella	35	3	10	100	88	No	9	1 year H. S.	21
856	do	Presbyterian Hospital	Mary M. Spears	30	3	10	100	86	No	10	do	21–35
857	do	St. Francis' Hospital	Edna Russell Sparey, R. N.	66	3	11	535	325	No	9	do	19
858	do	St. John's General Hospital	Veda P. Baybrett	24	3	3	110	70	No	10	2 years H. S.	21
859	do	St. Margaret's Memorial Hospital	Caroline E. Sparrow	17	3		80	48	No	9	H. S.	20–35
860	do	South Side Hospital	Jeannette L. Jones	32	3	6	200		No	9	C. S.	21–35
861	do	Western Pennsylvania Hospital	Jessie J. Turnbull	78	3	15	260	251	No	10½	H. S.	21
862	Pittston	Pittston Hospital Association	Margaret M. Cumming	8	3	3	35	18	Yes	9	2 years H. S.	
863	Pottstown	Pottstown Hospital	Katharine A. Moyer, R. N.	12	3	4	40	25	Yes	11	H. S.	18–30
864	Pottsville	Pottsville Hospital	Miss E. A. Loomis	27	3	4	100			10		21
865	Punxsutawney	Adrian Hospital	Fannie Sanders	18	3	12	72		No	8	H. S.	21
866	Reading	Homœopathic Medical and Surgical Hospital	Mrs. L. D. Chamberlain	18	3	4	75		Yes	12	do	18–30
867	do	Reading Hospital	Huldah Randall, R. N.	20	3	4	65	62	No	9	do	21–30
868	do	St. Joseph's Hospital	Sister Mary Fulgentia	18	3	3	135	77	No	10	C. S.	18–30
869	Ridgway	Elk County General Hospital *	Clara Smith Lynn	14	3	5	50					
870	Roaring Spring	Nason Hospital	Olive M. Bayer, R. N.	7	3	4	40	20	Yes	9½	1 year H. S.	21
871	Rochester	Rochester General Hospital	Blanche K. Fleming	6	3		50	19	No	8½	C. S.	21–32
872	Sayre	Robert Packer Hospital	Mary D. Mitchell	22	3		90	65	No	9	H. S.	21
873	Scranton	Hahnemann Hospital of Scranton	Emma Eachenbach	23	3	10	75	40	No	11	do	21–32
874	do	Moses Taylor Hospital	Janet Gordon Grant		3	6	84	61	No	9½	do	21–35
875	do	State Hospital	Miss M. Robertson	40	3	10	150	120	No	10	1 year H. S.	20
876	Sharon	Christian H. Buhl Hospital	Adeline B. Sinsabaugh	12	3	3	60	34	No	10	C. S.	21–35
877	South Bethlehem	St. Luke's Hospital	Marie Schley Brown	20	3	2	83	65	No	9½	do	20–35
878	Titusville	Titusville Hospital	Maude Williams	4	3	2	25	14	Rarely	9	1 year H. S.	20
879	Uniontown	Uniontown Hospital	Grace G. Brumbaugh	18	3	8	84	50	No	9	H. S.	20–35
880	Warren	Warren Emergency Hospital	Mary A. Hassett	15	3	4	75		Yes	10	C. S.	20–35
881	Washington	Washington Hospital	Elizabeth M. Gaimor	15	2½	6	60	30	No	10	do	19–35

THIS PAGE BO
VERTICAL IN

882	West Chester	Chester County Hospital	M. E. Worrest	25	3	8	100	80	No	10	H. S.	20
883	Wilkes-Barre	Mercy Hospital	Sister Mary Antonia	30	2½	15	125	70	No	12	do	20-35
884	do	Wilkes-Barre City Hospital	Caroline Hill, R. N	37	2½	13	158	93	Yes	9	do	20-35
885	Wilkinsburg	Columbia Hospital	Helen Madison Ucker	53	3	12	150	85	No	8½	C. S.	20
886	Williamsport	Williamsport Hospital	Daisy B. Mann	32	3	13	102	93	No	10	H. S.	20-30
887	York	York Hospital and Dispensary	D. Jeannette Copeland	17	3	5	70	55	No	9	do	21-35
	PORTO RICO.											
888	Ponce	St. Luke's Memorial Hospital	Carl Vogel, M. D	14	3	3	65	35	Yes	11	C. S.	22
889	San Juan	Insular School for the Training of Nurses of the Municipal Hospital.*	Pilar Cabrera	16	2	4	40					
890	do	Presbyterian Hospital	M. Louise Beaty	13	3	4	45		No	10	8th grade	17-25
	RHODE ISLAND.											
891	Newport	Newport Hospital	Janet MacLaurin	33	3	10	100	50	No	8½	H. S.	21-35
892	Pawtucket	Twin City Hospital*	William H. Heimer, M. D	7	2	1	20					
893	Providence	East Side Hospital	Elizabeth P. Wilson, M. D	14	3	3	35	20	No	10	C. S.	18
894	do	Rhode Island Hospital	Ines Clark Lord	100	3	45	400	310	No	10	do	21
895	do	St. Joseph's Hospital	Sister Mary Ovila	25	3	5	100	93	Yes	12	H. S.	21
896	Woonsocket	Woonsocket Hospital	Lucy C. Ayres	6	2	3	30	18	No	9	C. S.	21
	SOUTH CAROLINA.											
897	Charleston	Roper Hospital	Rosa A. Issertell	35	2	13	200	150	No	10	H. S.	18
898	do	Hospital and Training School for Nurses*	Celestine L. Martin	10	3	4	20					
899	do	St. Francis Xavier Infirmary	Sister Mary Bernardine	14	2		42	37	Yes	10		20-35
900	Chester	Pryor Training School for Nurses of the Magdalene Hospital.	Lelia A. Bleeker	10	3	2	30	20	Yes	8	H. S.	18-35
901	Columbia	Columbia Hospital	Susan Shrive	26	3	9	86	45	No	9	do	21-35
902	do	Knowlton Hospital	A. B. Knowlton, M. D	17	3	4	26	18	Yes	10	C. S.	21
903	do	Taylor Lane Hospital*	M. A. Evans, M. D	9	3	3	30					
904	Sumter	Sumter Hospital	Lila M. Davis	14	3	2	35	30	Yes	9	H. S.	21-35
	SOUTH DAKOTA.											
905	Aberdeen	St. Luke's Hospital	Sister Mary Dominic	22	3	3	100		No	9	do	18
906	Deadwood	St. Joseph's Hospital	Sister M. Rose	22	3	7	50		Yes	9	8th grade	18
907	Hot Springs	Our Lady of Lourdes Hospital	Sister M. Augusta	20	3	3	52	40	Yes	9	do	18-30
908	Madison	Madison Hospital	Mrs. A. E. Clough	10	2	4	35	15	Yes	12	C. S.	18
909	Sioux Falls	Sioux Falls Hospital	Clara Savereide	15	2	5	35		Yes	10	do	20-35
910	Watertown	Watertown Hospital*	Winifred Boston	3	2	1	20					
911	Yankton	Sacred Heart Hospital*	Sister M. Juliana, R. N	7	3	4	25					
	TENNESSEE.											
912	Chattanooga	Baroness Erlanger Hospital	Alma M. Weller	20	2	8	100	65	No	10		19
913	Knoxville	Knoxville General Hospital	Lucia K. Wagner	25	3	3	80	34	No	9	H. S.	20
914	Memphis	Presbyterian Home Hospital	Louise Buford	23	2	13	35	30	Yes	12	do	18-30
915	Nashville	Nashville City Hospital*	W. M. McCabe, M. D	13	3	1	110					

*Statistics of 1910.

[1] Abbreviations used: C. S.—Common school. H. S.—High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	TENNESSEE—contd.											
916	Nashville	Walden University Meharry Medical College Mercy Hospital.	G. W. Hubbard	7	3	5	32	.....	Yes	8	2 years H. S.	20
917	.....do	St. Thomas' Hospital	Sister Scholastica	30	3	7	85	70	No			
918	.....do	Woman's Hospital of the State of Tennessee	Emily Gordon Friend, R. N.	17	2	4	40	30	No	9	H. S.	19
919	Sewanee	Hodgson Memorial Hospital *	Carmi Suddath	3	2	2	20					
	TEXAS.											
920	Amarillo	St. Anthony's Sanitarium	Sister Mary Winifred	8	3		100	40	Yes	9	C. S.	18-28
921	Austin	Austin Sanitarium	Ethleen Rowe, R. N.	16	3	2	50	20	Yes	11	H. S.	18
922	.....do	Seton Infirmary	Sister Ursula	12	3	3	50		Yes	9	C. S.	18-28
923	Dallas	St. Paul's Sanitarium	Sister Margaret	30	3	4	130	95	Yes	10	.....do	21-35
924	.....do	Texas Baptist Memorial Sanitarium	Mary Chiles Scott, R. N.	45	3		135	68	No	10	H. S.	21-35
925	El Paso	Hotel Dieu—Sanitarium	Sister Elizabeth	28	3	6	150	70	Yes	9	.....do	21-35
926	.....do	Providence Hospital	Miss E. L. Koehnback	20	3	20	60		No	10	.....do	20-30
927	Fort Worth	St. Joseph's Hospital	Mother Cleophas	33	3	2	400	200	Yes	10	.....do	20
928	Gainesville	Gainesville Hospital	James Edward Gilcreest, M. D.	7	2	3	20	10	Yes	9	.....do	21-35
929	Galveston	John Sealy Hospital*	Ethel d'A. Clay	32	3	1	150					
930	.....do	St. Mary's Infirmary	Sister Mary Elizabeth	17	2	6	160	120	No	8	H. S.	18-36
931	Houston	Houston Infirmary Sanitarium	Sydney J. Smith, M. D.	12	3	3	100	65	Yes	10	C. S.	18-35
932	.....do	St. Joseph's Infirmary	Sister M. Sebastian	25	2	4	200	100	No	11	H. S.	18-36
933	San Antonio	Baylor Hospital	Elizabeth Baylor	10	2	4	30	25	No	9	.....do	19
934	.....do	Physicians' and Surgeons' Hospital	Marjorie M. Taylor	18	2	1	50	38	No	8		20
935	.....do	Santa Rosa Infirmary *	Sister M. Robert	34	3		250					
936	Sherman	Saint Vincent's Sanitarium *	Sister Vincentia	19	3	7	75					
937	Texarkana	Texarkana Hospital	Bess. A. Campbell, R. N.	8	2	4		15	No	8	H. S.	22-32
938	Victoria	Valley View Hospital	Selma E. Lichey	3	2	2	14	4	Yes	6	C. S.	19-30
	UTAH.											
939	Provo	Provo General Hospital	Zina Johnson	4	2	1	20	8	Yes	9	1 year H. S.	18-30
940	Salt Lake City	Holy Cross Hospital	Sister M. Sylvina	24	3	2	150	85	No	12	8th grade	18-35
941	.....do	Dr. W. H. Groves' Latter Day Saints Hospital	Charlotte E. Dancy, R. N.	50	3	11	105	80	No	8	.....do	19
942	.....do	St. Mark's Hospital	F. D. Lees	40	3	13	150	100	No	8½	H. S.	18-35

THIS PAGE B
VERTICAL IN

943	Brattleboro	Brattleboro Memorial Hospital	Mary Louise Wakefield	23	3	4	32	25	Yes	10	do	18–35
944	Burlington	Mary Fletcher Hospital	Clara J. Churchill	43	3	8	120	90	Yes	10	1 year H. S.	20–35
945	Hardwick	John S. Holden Memorial Hospital *	Elizabeth S. Parker	3	3	1	15					
946	Montpelier	Heaton Hospital *	Elenora Stalker	20	2	6	40					
947	Proctor	Proctor Hospital	Annabel L. Stewart	12	2½	3	17	14	No	8½	C. S.	21–35
948	Randolph	Randolph Sanitorium	Florence L. Howe	8	2	5	15		Yes	10	do	18–30
949	Rutland	Rutland Hospital	Anna A. Aitken	18	2½	9	40	3	Yes	10	H. S.	20–35
950	St. Albans	St. Albans Hospital	Nina A. Smith	10	2½	1	20	14	Rarely	10	do	23–35
951	St. Johnsbury	Brightlook Hospital	E. Myrtle Miller	15	2	1	26	18	Yes	10	C. S.	21
952	Winooski	Fanny Allen Hospital	Sister Superior in charge of nurses.	15	2	10	65	47	Yes	9	do	19–35
	VIRGINIA.											
953	Alexandria	Alexandria Hospital	Miss N. A. Simmons, R. N.	9	3	2	36		No	12	do	21
954	Charlottesville	University of Virginia Hospital *	Mary Jean Hurdley	28	3	5	110					
955	Danville	Danville General Hospital	Celia A. Brian, R. N.	20	3	1	75	26	Yes	8	C. S.	22–35
956	Fredericksburg	Mary Washington Hospital	F. H. Bescherer, R. N.	6	3	2	16	7	Yes	9	do	20
957	Hampton	Hampton Training School for Nurses of the Dixie Hospital.*	Esther Morgan, M. D.	23	3	7	23					
958	Lynchburg	Home and Retreat Hospital *	S. L. Earhart		3	4	30					
959	Newport News	St. Francis Hospital	Miss L. G. Atkinsin	6	3	2	25	20	Yes	10	H. S.	19
960	Norfolk	Norfolk Protestant Hospital *	Ethel Smith	32	3	11	140					
961	do	St. Vincent's Hospital	Sister Catherine	46	3	14	300	150	No	10	C. S.	21–30
962	do	Sarah Leigh Hospital	Mary A. Newton	21	3	3	50	37	No	8½	do	20–33
963	Petersburg	Petersburg Hospital	Mary Julia Moore	15	3	4	55		No	10	H. S.	20
964	Portsmouth	King's Daughters' Hospital *	Florence E. Leslie	8	3	1	30					
965	Richmond	Hygeia Hospital *	Miss F. W. Henderson	7	3	1	40					
966	do	Memorial Hospital	Mary K. Smith, R. N.	45	3	15	150		No	8	1 year H. S.	21
967	do	Retreat for the Sick	Lottie G. Thomas, R. N.	18	3	8	54		Yes	8½	do	20–35
968	do	St. Luke's Hospital	Ruth I. Robertson, R. N.	35	3	8	80		No	9	H. S.	22
969	do	Sheltering Arms Free Hospital	Mary Broadders	10	3	2	40	30	No	9	C. S.	21
970	do	University College of Medicine Virginia Hospital	Agnes D. Randolph, R. N.	40	3	14	80	55	No	8	do	21
971	Roanoke	Roanoke Hospital	Margaret Ossenbeck, R. G. N.	12	3	4	42	26	No	10	do	18–30
972	Staunton	King's Daughters' Hospital	Mrs. Jane Brown Lanson	8	3		21	15	No	8–10	H. S.	21
973	Winchester	Winchester Memorial Hospital	Angelica P. Didier	10	3	2	36	18	Yes	8	do	21
	WASHINGTON.											
974	Aberdeen	Aberdeen General Hospital	Mrs. Paul Smits	10	3		50	18	Yes	9½	C. S.	18
975	do	St. Joseph's Hospital	Sister M. Augustine	4	2½	2	60	10	No	10	1 year H. S.	20–35
976	Bellingham	do	Sister M. Aloysius	20	3	2	100	25	Yes	8	H. S.	20
977	do	St. Luke's Hospital	Ella A. Wilkinson, R. N.	10	2½	3	60	53	No	10	8th grade	20
978	Colfax	St. Ignatius' Hospital *	Sister Superior	6	3		52					
979	Everett	Everett Hospital *	Ida H. Brown	15	2½	4	50					
980	Hoquiam	Hoquiam General Hospital	Ruby C. Rogers, R. N.	11	2½	6	60	45	No	9	H. S.	20–30
981	North Yakima	St. Elizabeth's Hospital	Sister Laurienne	12	3	3	60	3	No	9	8th grade	20
982	Port Angeles	Port Angeles General Hospital *	Mrs. Shepard	3	2½		35					
983	Seattle	Minor Private Hospital	Lucy I. Pringle, R. N.	26	3	8	56	50	No	8	H. S.	20–30
984	do	Providence Hospital	Sister Vincent	45	3	4	180		No	9½	C. S.	20–30

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

TABLE 3.—*Statistics of schools for the training of professional nurses for the school year 1910–11—Class A*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	WASHINGTON—contd.											
985	Seattle	Seattle General Hospital	Evelyn H. Hall	55	3	17	110	95	No	9	8th grade	20
986	do	Wayside Emergency Hospital	Katherine Major	8	3		50		No	8½	H. S.	20
987	Spokane	Maria Beard Deaconess Home	Myrtle M. Berkey	28	2½	14	50	32	No	8½	do	21
988	do	St. Luke's Hospital	Johanna Shepherd Burns		3	10	65	55	No	8	1 year H. S.	20–30
989	do	Spokane General Hospital	Jessie Marie Foster, R. N	8	3	4	40	20	No	10	H. S.	20
990	South Bend	South Bend General Hospital	Miss Skaggs	5	3	1	30	8	Yes	10	do	18
991	Tacoma	Fannie C. Paddock Memorial Hospital*	Olive M. Sill	50	3½	12	100					
992	do	St. Joseph's Hospital	Sister Mary, O. S. F	28	2,2½	7	80	80	No	10	H. S.	19
993	Walla Walla	St. Mary's Hospital	Sister Hilary	15	3	1			No	10	8th grade	18
	WEST VIRGINIA.											
994	Charleston	Charleston General Hospital	Emma Vernon	11	3	4	60	30	Yes	12	C. S.	21
995	Clarksburg	Kessler Hospital	S. M. Mason, M. D	10	3		30	18	Yes	9½	do	18–35
996	do	St. Mary's Hospital*	Sister M. Adelaide, R. N	13	3	3	70					
997	Elkins	Davis Memorial Hospital	Miss M. E. Walker	12	3	3	50	20	Yes	9	C. S.	20
998	Fairmont	Cook Hospital	J. C. Miller	24	3	4	55	20	Rarely		H. S.	18–35
999	do	Miners' Hospital No. 3	J. W. McDonald, M. D	8	2	1	50	35	No		do	20
1000	Glendale	Reynolds Memorial Hospital*	Wilma Hastings	10	2	5	84					
1001	Hansford	Sheltering Arms Hospital	Miss M. J. Parry	15	2		90	52	No	10	H. S.	21–35
1002	Hinton	Hinton Hospital*	Marion D. Lingenfelter	27	3	5	75					
1003	Huntington	Huntington General Hospital	Laura B. Illick	9	2	1	35	25	No	10		21
1004	do	Mount Hope Hospital*	Shelly Bryan	18	3	5	100					
1005	Keyser	Hoffman Hospital	C. S. Hoffman	9	3	4	25	13	No	10	C. S.	18–27
1006	McKendree	Miners' Hospital No. 2	B. B. Wheeler, M. D	6	2		50	35	No	9	H. S.	18–30
1007	Parkersburg	City Hospital	C. W. Shaw	7	2	5	32		No	8		21
1008	do	St. Joseph's Hospital	Sister M. Bernadette Gans	10	3	3	50	25	No	9	H. S.	21
1009	Wheeling	City Hospital*	Mrs. M. G. Carpenter	24	2	5	60					
	WISCONSIN.											
1010	Beloit	H. P. Strong Emergency Hospital	Martha J. Head	6	2	4	17	9	Yes	8		
1011	Green Bay	Hennepee Sanitarium										

THIS PAGE VERTICA

1013	Janesville	Palmer Memorial Mercy Hospital*	Anna G. Dastych	11	2½	2	20					
1014	Kenosha	Kenosha Hospital	Helen de Spelder-Moore	15	2		50	28	No	8½	1 year H. S.	20
1015	La Crosse	La Crosse Lutheran Hospital*	Annabel T. Paxton	25	3	5	80					
1016	do	La Crosse Public Hospital*	Ella C. Ingwersen	16	3	7	50					
1017	do	St. Francis' Hospital	Sister M. Gregory	20	3	1			Rarely	8	8th grade	20
1018	Madison	Madison General Hospital	Elfreda Johnston, R. N	21	2	9	60	40	No	9	C. S.	21–35
1019	Milwaukee	Wisconsin Training School for Nurses of the Lakeside Hospital.	Elysian Thomas	24	2½	9	36	15	Yes	12	H. S.	20–30
1020	do	Milwaukee Hospital	Sister Emma Lerch	22	3	6	86	80	No	10	do	20–35
1021	do	St. Joseph's Hospital	Sister Mary Regina	40	2½	12	125	110	No	9–10	8th grade	20
1022	do	St. Mary's Hospital	Sister M. Dolores	40	3	12	200	100	No	10	do	22–30
1023	do	Trinity Hospital	Julia A. Duffy	70	3	26	80		Rarely	9	do	20–35
1024	Racine	Alice Horlick Memorial Hospital	Alma B. Kundert	12	2	1	38		Yes	10		20–30
1025	Wauwatosa	Milwaukee County Hospital	Helen W. Kelly	34	2	10	250	200	No	9	C. S.	21
		WYOMING.										
1026	Cheyenne	St. John's Hospital	Jessie Irwin	15	2	4	75	33	No	10½	H. S.	20–30
1027	Rock Springs	Wyoming General Hospital	Martha A. Converse	13	2	4	75	50	Yes	9½	do	20
1028	Sheridan	Sheridan General Hospital	Harriet Hastings	12	2	6	60	30	Yes	10		21

* Statistics of 1910.

[1] Abbreviations used: C. S.—Common school. H. S.—High school.

E BOUND
- IN BOOK

TABLE 4.—*Hospitals and schools offering postgraduate or special courses.*

	Location.	Name of school or hospital with which it is connected.	Superintendent of courses.	Students enrolled.	Months in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Entrance requirements.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	CALIFORNIA.											
1	San Francisco	San Francisco Maternity Hospital	E. G. Harrison, M. D	4	8	4	13	.....	No.	.....	C. S.	21-41
	DISTRICT OF COLUMBIA.											
2	Washington	Florence Crittenton Training School for Nurses *	Margaret L. White	12	7	9	8	.....	.....	.....	.....	.....
	ILLINOIS.											
3	Chicago	Chicago Lying-in Hospital and Dispensary Post-Graduate School.	Mrs. Emma E. Koch	8	3	.....	15	.....	No.	10	.....	.....
	MASSACHUSETTS.											
4	Boston	Boston Floating Hospital Postgraduate School	Sarah A. Egan	52	3	44	240	167	.....	.....	.....	.....
5	.....do	Infants Hospital Postgraduate School	Margaret Farquhar	6	4	.....	.....	.....	No.	9	.....	.....
6	Brookline	Free Hospital for Women Postgraduate School	Hannah Jane Ewin	15	4½	14	60	40	No.	8-9	.....	.....
	MISSOURI.											
7	St. Louis	St. Louis Children's Hospital *	Ruth Riley	15	8	.....	104	.....	.....	.....	.....	.....
8	.....do	St. Louis Maternity Hospital	Miss O. Beyer	12	2	.....	30	18	.....	.....	.....	.....
	NEW YORK.											
9	Brooklyn	St. Christopher's Hospital for Babies *	Jane Emily O'Daly	34	6	.....	41	.....	.....	.....	.....	.....
10	New York City	General Memorial Hospital Postgraduate School	Helen Knight Smith, B. A., R. N.	25	6	.....	100	58	No.	9-10	.....	.....
11	.....do	Hospital for Scarlet Fever and Diphtheria Patients	Mary E. Kennedy, Principal	8	2,3	.....	40	.....	No.	9	.....	.....
12	.....do	New York Eye and Ear Infirmary	Elizabeth G. Whitman	43	3	.....	176	130	No.	.....	.....	.....
13	.....do	New York Polyclinic Medical School and Hospital Postgraduate School.	Agnes D. Carson, R. N	.....	9	32	96	80	No.	11	.....	.....
14	.....do	Sloane Hospital for Women	Mary E. Huthinson	52	3	.....	135	110	No.	9	.....	.....
15	.....do	Society of Lying-in Hospital of the City of New York.	Mary I. Bustard	55	3	.....	196	157	No.	12	.....	.....

THIS PAGE E
VERTICAL I

	OHIO.													
16	Mt. Vernon	Ohio State Sanatorium	C. Elizabeth Allen	4	3		96	63						
	PENNSYLVANIA.													
17	Philadelphia	Jewish Maternity Association Postgraduate School*	Rose Rubin, M. D	10	2,3		22							
18	do	Maternity Hospital	Mary D. Roche	5	3		22	16			9			
19	do	Pennsylvania Orthopædic Institute and School of Mechano-Therapy.	Max J. Walter	73	3	51		40	No	6-8	C. S.			21
20	do	Preston Retreat Lying-in Hospital*	Margaret A. Thomas	60	2		50							
21	Pittsburgh	Elizabeth Steel Magee Hospital	Frances A. Stone	7	3,6		59	46	No		8			
22	do	Reineman Maternity Hospital*	Charles Edward Ziegler	20	3,6	19	34							
	RHODE ISLAND.													
23	Providence	Providence Lying-in Hospital	Alida Young	16	4		50	30	No		10			

* Statistics of 1910.

[1] Abbreviation used: C. S.=Common school.

TABLE 5.—*Statistics of schools for the training of professional nurses, for the school year 1910–11—Class B.*

[Class B includes schools connected with hospitals for the treatment of nervous and mental diseases, insane, etc.]

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	ALABAMA.											
1	Tuscaloosa	Brice Hospital	J. T. Searcy, M. D.	31	2	12	1,500	1,310	Rarely.	8-10	C. S.	17
	CONNECTICUT.											
2	Middletown	Connecticut State Hospital	Anna E. Shepherd	21	2	8	2,500	.....	No.	10½	C. S.	18
3	Norwich	Norwich State Hospital	Thomas F. Erdman, M. D.	16	2	6	850	.....	Yes.	10½–11½	C. S.	18
	DISTRICT OF COLUMBIA.											
4	Washington	Government Hospital for Insane	Josephine M. Stransky, M. D.	47	2	18	2,978	2,887	No.	10	C. S.	18
	ILLINOIS.											
5	Anna	Anna State Hospital	May Kennedy, R. N.	60	3	5	1,560	.....	No.	12	C. S.	20
6	Dunning	Dunning State Hospital	Charles Eberlein, M. D.	162	3	13	.....	2,308	No.	10	C. S.	.....
7	Jacksonville	Jacksonville State Hospital	Gertrude E. Craig, R. N.	75	3	4	1,570	1,565	No.	12	C. S.	.....
8	Kankakee	Kankakee State Hospital	Sadie Barnes	75	3	10	140	130	No.	10	C. S.	18-21
9	Peoria	Peoria State Hospital	George A. Zeller	100	3	6	2,100	2,100	No.	8	C. S.	18
	IOWA.											
10	Cherokee	Cherokee State Hospital	M. N. Voldeng, M. D.	.....	3	4	.....	.....	No.	13	1 year H. S.	18
11	Clarinda	Clarinda State Hospital	Max E. Witte	19	3	.....	1,150	1,062	No.	.....	C. S.	.....
12	Glenwood	Iowa Institution for Feeble Minded Children.	George Mogridge, M. D.	8	3	3	75	47	Yes.	10	C. S.	18
13	Independence	Independence State Hospital	W. P. Crumbacker, M. D.	91	2,3	21	1,295	1,171	No.	13	H. S.	20-23
14	Mt. Pleasant	Mt. Pleasant State Hospital	C. F. Applegate, M. D.	20	2	10	1,200	1,060	No.	12	C. S.	20

THIS PAGE VERTICAL

	KANSAS.												
15	Ossawatomie	Ossawatomie State Hospital	L. L. Uhls	11	2	3	1,300	1,290	No	12	C. S.	18
16	Topeka	Topeka State Hospital	T. C. Biddle	60	2	5	1,380	1,360	No	12		
	KENTUCKY.												
17	Hopkinsville	Western Kentucky Asylum	H. P. Sights	17	3	3	1,200	1,150	No	12	C. S.	18–35
	MAINE.												
18	Augusta	Maine Insane Hospital	Jennie M. Smith, R. N.	13	2	6	900	800	No	9	C. S.	18–25
19	Bangor	Bangor Insane Hospital	Mrs. Mary E. Hickey	35	2	7	600	500	Yes	12	C. S.	21
	MARYLAND.												
20	Towson	Sheppard and Enoch Pratt Hospital	Cora R. McCabe	19	2	10	150	105	No	10	H. S.	21
21	Sykesville	Springfield State Hospital	J. Clement Clark, M. D.	14	2	5	1,040	1,025	Rarely	12	C. S.	20
	MASSACHUSETTS.												
22	Hathorne	Danvers State Hospital	Eunice A. Frick	23	2	7	1,500	1,437	No	10½	C. S.	21
23	Medfield	Medfield State Hospital	Edward French, M. D.	16	2½	8	1,750		No	12		
24	Monson	Monson State Hospital	Everett Flood	26	3	11	900	850	Yes	9	C. S.	21
25	Northampton	Northampton State Hospital	Alice E. Bedell	26	3	11	900	850	Yes	9	C. S.	21
26	Taunton	Taunton State Hospital	Reba G. Cameron, R. N.	12	2	6	899	872	No	12	C. S.	18
27	Tewksbury	State Infirmary	Laura E. McEachran, R. N.	113	3	8	1,000		No	8		
28	Waverley	McLean Hospital	Lucia E. Woodward	74	3	21	2,000		No	9¾		21–30
29	Westborough	Westborough Hospital	Lottie Haines Miller	137	2½	37	225	222	No	12	H. S.	20–35
30	Worcester	State Hospital	A. M. Quimby, M. D.	90	2½	26	1,000	1,038	No	10	C. S.	20
	MICHIGAN.			90	2	12	1,400	1,353	No	10	C. S.	
31	Kalamazoo	Michigan Asylum	Theresa G. Leach	80	2	30	1,950	1,926	No	8	H. S.	21–30
32	Newberry	Newberry State Hospital	Helen Cairns Sinclair, R. N.	27	2½	4	825		No	9½	1 year H. S.	19
33	Pontiac	Eastern Michigan Asylum	E. A. Christian, M. D.	50	2		1,435	1,390	No	14	C. S.	20–22
	MINNESOTA.												
34	Fergus Falls	Fergus Falls State Hospital	George O. Welch	20	3	6	1,635	1,613	Yes	10		18–35
35	Rochester	Rochester State Hospital	R. M. Phelps	80	3	16		1,120	No	12		20
36	St. Peter	St. Peter State Hospital	H. A. Tomlinson	61	3	18	1,075	1,002	Yes	12	C. S.	18–27
	NEBRASKA.												
37	Lincoln	Lincoln State Hospital	Lillian B. Stuff, R. N.	26	3		700	600	No	14	C. S.	18–35
38	Norfolk	Norfolk State Hospital	Andrew Johnson, M. D.	11	2½	6	342	314	No	10–12	C. S.	21–35
	NEW HAMPSHIRE.												
39	Concord	New Hampshire State Hospital	Etta M. Bagley	60	3	15	1,114		No			21–35

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

TABLE 5.—*Statistics of schools for the training of professional nurses, for the school year 1910–11—Class B*—Continued.

	Location.	Name of school or hospital with which it is connected.	Superintendent of nurses.	Students enrolled.	Years in course.	Graduates in 1911.	Capacity (beds).	Average daily number of patients.	Are students sent into families during training?	Daily number of hours on duty.	Requirements for admission.	
											Education.[1]	Age.
	1	2	3	4	5	6	7	8	9	10	11	12
	NEW JERSEY.											
40	Cedar Grove	Essex County Hospital for the Insane.	Guy Payne, M. D.	50	2	12	1,500	1,350	Yes	13		21
41	Greystone Park	New Jersey State Hospital	B. D. Evans, M. D.	63	2	12	2,250	2,206	Rarely	16	C. S.	21
42	Trenton	New Jersey State Insane Hospital	Elvina R. Bailey, R. N.	21	2	11	1,425		No.	10		20–35
43	Vineland	New Jersey Training School *		3	3		40					
	NEW YORK.											
44	Binghamton	Binghamton State Hospital	Charles G. Wagner, M. D.	23	2	8	2,252	2,303	Rarely	11½	1 year H. S.	20
45	Brooklyn	Long Island State Hospital	Helen Clune	26	2	6	786	741	No.	11	1 year H. S.	21
46	Buffalo	Buffalo State Hospital	Arthur W. Hurd, M. D.	38	2	19	1,960	1,953	Rarely	10	C. S.	18
47	Central Islip	Central Islip State Hospital	George A. Smith, M. D.	47	2	14	4,300		No.	10½	H. S.	21–35
48	Gowanda	Gowanda State Homœopathic Hospital.	Daniel H. Arthur, M. D.	36	2	11	1,100	1,072	Rarely	11		18
49	Kings Park	Kings Park State Hospital	William Austin Macy, M. D.	24	2	13	3,464	3,226	No.	12	1 year H. S.	18
50	Middletown	Middletown State Homœopathic Hospital.	Maurice C. Ashley, M. D.	36	2	14	2,020	2,000	No.	12	1 year H. S.	19
51	New York City	Manhattan State Hospital	Ella B. Kurtz, R. N.	35	2	15	4,600	4,488	No.	12½	8th grade	19
52	Ogdensburg	St. Lawrence State Hospital *	Josephine A. Callahan	43	2	7						
53	Poughkeepsie	Hudson River State Hospital	Charles W. Pilgrim, M. D.	27	2	12	3,000	2,924	No.	11	C. S.	18
54	Rochester	Rochester State Hospital	Mary Elizabeth Bell, R. N.	45	2	16	1,454	1,401	No.	11½		18
55	Utica	Utica State Hospital	Bessie B. Tibbitts, R. N.	49	2	24	1,443	1,400	No.	12½		
56	Willard	Willard State Hospital	R. M. Elliott, M. D.	27	2½	11	2,432	2,368	No.	10		18–35
	OHIO.											
57	Cleveland	Cleveland State Hospital	Charles H. Clark, M. D.	45	2	13	1,565	1,508	No.	12	C. S.	21
58	Columbus	Columbus State Hospital	Oral G. Perkins	26	2	17	1,730	1,723	No.	13	C. S.	21
59	Massillon	Massillon State Hospital	Mary Weise	60	3	16	1,630	1,600	No.	10½	C. S.	21–45

THIS PAGE
VERTICAL

	PENNSYLVANIA.												
60	Danville	State Hospital for the Insane	H. B. Meredith, M. D	68	2	21			No				20-30
61	Dixmont	Dixmont Hospital for the Insane	Miss B. M. Cornwall	130	2	2	600		No		10	C. S.	20-35
62	Norristown	State Hospital for the Insane (men)	W. W. Richardson, M. D	25	2	8	1,380		No		10½	C. S.	20
63	....do	State Hospital for the Insane (women)	Elizabeth C. Spencer, M. D	60	2	9	1,460		No		12, 14		18-30
64	Philadelphia	Friends' Asylum for the Insane	Eva Rawlings, M. D		2	12	200	189	No		13½		18-35
65	Polk	State Institution for Feeble Minded	J. M. Murdock	40	2	10	1,580		No		8	C. S.	20
66	Warren	State Hospital for the Insane	W. W. Hawke, M. D	39	2	5	1,417	1,400	No		11	C. S.	21-35
	RHODE ISLAND.												
67	Providence	Butler Hospital *	R. Helen Cleland	130	2,3	15	200						
	SOUTH CAROLINA.												
68	Columbia	State Hospital for Insane *	Fanny Irwin	121	2	7	1,575						
	VERMONT.												
69	Waterbury	Vermont State Hospital *	Josephine E. Case	17	2	5	595						
	VIRGINIA.												
70	Staunton	Western State Hospital	J. S. de Jarnette, M. D	7	3	3	1,182	1,107	Rarely		14	C. S.	10

* Statistics of 1910.

[1] Abbreviations used: C. S.=Common school. H. S.=High school.

FOUND
BOOK

Office Supreme Court, U. S.
FILED
3 1914
JAMES D. MAHER
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1914

Nos. 112, 362 and 363 (Consolidated).

F. A. MILLER,
Plaintiff in Error,
vs.
F. P. WILSON, Sheriff, etc.,
Defendant in Error.
} No. 112

WILLIAM B. BOSLEY et al., Trustees of the Samuel Merritt Hospital, and ETHEL E. NELSON,
Appellants,
vs.
JOHN P. McLAUGHLIN, Labor Commissioner, etc., et al.,
Appellees.
} Nos. 362, 363

BRIEF ON BEHALF OF DEFENDANT IN ERROR AND APPELLEES.

U. S. WEBB,
Attorney General for the State of California,
Attorney for Defendant in Error.
WILLIAM DENMAN,
G. S. ARNOLD,
Attorneys for Defendant in Error and Appellees.

WILLIAM DENMAN,
Counsel for Defendant in Error and Appellees.

Filed this ..... *day of November, 1914.*

JAMES D. MAHER, Clerk.

By ..... *Deputy Clerk.*

INDEX.

Pages

STATEMENT OF CASE..... 1- 6

ARGUMENT 6-45

I. CALIFORNIA HAS THE POWER TO PREVENT THE GAINFUL EMPLOYMENT OF WOMEN FOR OVER EIGHT HOURS A DAY IN HOTELS AND HOSPITALS, AND THAT SUCH A RESTRICTION IS NOT AN UNCONSTITUTIONAL DENIAL OF FREEDOM OF CONTRACT:

(a) because the limitation of the number of hours women must work in these two employments has a direct relationship to women's health, and hence to the health of the race as a whole, as well as the safety and health of those she serves.... 6-24

(b) because women are admittedly weaker than men in the struggle of economic competition and may be protected by legislative enactment against the oppressive bargaining or control of their employer, whether arising from cupidity or such a mistaken philanthropy as that of the hospital here, which admittedly works its undergraduate girl nurses the equivalent of twelve hours a day for a six day week to make a better showing of the number of poor people cared for..... 24-28

(c) because the limitation of the number of hours of woman's labor in gainful occupations to not over a half of her waking time may check the rapid decline in reproduction of the older American stocks and in any event leaves her free for the development of mind and body for wifehood and motherhood, and hence insures the increased intelligence and strengthening of the race through the mother, to whom primarily (in California at least) the shaping of the child mind, the directing of his habits and the development of his character is primarily entrusted.....28-31

Pages

II. THAT THE CALIFORNIA STATUTES IN QUESTION DO NOT DENY EQUAL PROTECTION OF THE LAW BECAUSE:

(a) The continuous work of women in hotels and hospitals differs essentially from the intermittent seasonal work of women in harvesting, curing, canning or drying of any variety of perishable fruit or vegetables ..... 31 - 34

(b) There is an essential difference between the work of women in hotels and in lodging houses ..... 34 - 37

(c) The graduate nurse belongs to a class composed of women mentally better educated, physically better trained, professionally more experienced, and economically better organized to resist oppressive regulation imposed by their employers, and hence may be left free from legislative restriction in the performance of her distinctive functions in the hospital. She is the best fitted to cope with those emergencies arising in the operating room and ward, which often require attendance for more than the eight hour period and hence excepting her from the law provides for such emergencies ..... 37 - 44

CONCLUSION ..... 44 - 45

Table of Cases Cited.

Pages

Adams v. Milwaukee, 228 U. S. 572..... 17

Barrett v. Indiana, 229 U. S. 26..... 44

Boarding houses excluded from statutes regulating hotels in Delaware, Illinois, Michigan, Maryland, New Jersey, Oregon, Pennsylvania, Utah, Virginia, Washington.

Bureau of Education Bulletin, 1912, No. 7..10, 19, 20, 21, 38, 39

Connolly v. Union Pipe Co...... 41

Cotting v. Kansas..... 41

Doyle v. Continental Ins. Co., 94 U. S. 535..... 44

Hawley v. Walker, 232 U. S. 718.....8, 16, 32, 33

Holden v. Hardy, 169 U. S. 366.....25, 42

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 76....8, 31, 41

McLean v. Arkansas 43

Miller, Ex parte, 162 Cal. 687.....3, 17, 34, 35

Muller v. Oregon, 208 U. S. 412.....7, 14, 26, 32, 42

Patsone v. Pennsylvania, 232 U. S. 138.....17, 44

People v. Elerding, 254 Ill. 579..... 36

Quong Wing v. Kirkendall, 223 U. S. 59.....41, 44

Riley v. Massachusetts, 232 U. S. 671.....15, 32

Smith v. Texas..... 43

Wenham v. State, 65 Neb. 395.....27, 42

Women's Eight Hour Law, California, Act of March 22, 1911 2

In the Supreme Court
OF THE
United States

October Term, 1914

Nos. 112, 362 and 363 (Consolidated).

F. A. MILLER, *Plaintiff in Error,* vs. F. P. WILSON, Sheriff, etc., *Defendant in Error.*	No. 112
WILLIAM B. BOSLEY et al., Trustees of the Samuel Merritt Hospital, and ETHEL E. NELSON, *Appellants,* vs. JOHN P. McLAUGHLIN, Labor Commissioner, etc., et al., *Appellees.*	Nos. 362, 363

BRIEF ON BEHALF OF DEFENDANT IN ERROR AND APPELLEES.

Statement of Case.

The three appeals here consolidated arise out of certain California laws, limiting the hours of labor for

women in hotels, hospitals and certain other places, requiring seats for women employees, and punishing employers who permit or require violations of the act by their employees. The original act provided as follows:

"Section 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

Sec. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

Sec. 3. Any employer who shall require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to provide suitable seats as provided in section two of this act, or who shall permit or

> suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than $50 nor more than $200, or imprisoned in the county jail not less than five nor more than thirty days, or both fined and imprisoned."
>
> *Act of March 22, 1911.*

The act was, in June, 1913, amended by the addition to the above enumeration of protected employments, the public lodging house, apartment house, hospital and place of amusement and designating the appellants as the state's agents for its enforcement.

The first appeal involves the validity of the act as applied to the hours of women's labor in hotels, the second and third, their hours of labor in hospitals. The first case, which is hereafter called the "Miller", or hotel, case, arose from the arrest of Mr. Miller on a charge of the misdemeanor of permitting the employment of a waitress in his hotel for over eight hours in a single day. The case came on habeas corpus before the Supreme Court of California, which upheld the statute as a health regulation.

Ex parte Miller, 162 Cal. 687.

The second two appeals, which are hereafter called the "Bosley", or hospital, appeals, arise from a petition filed in the District Court of the United States for the Northern District of California, to restrain the Labor Commissioner and his deputy, who constitute the Bureau of Labor Statistics, and the District Attorney of the county in which the Merritt hospital is

situated, from prosecuting its trustees for employing its women nurses, pharmacist, etc., in excess of eight hours a day. One appeal is from the order denying a motion for an interlocutory injunction and the other from the decree dismissing the bill. The only difference between them is that in the second appeal appears an offer by the petitioners, at the final hearing, to prove the allegations of the petition and certain other facts not alleged therein (no amendment being asked for), which offer was denied.

There are no questions of jurisdiction or appellate procedure raised, and the constitutionality of the legislation is the sole controversy before the court.

The three appeals rest their arguments on a claimed invasion of the right of contract and a denial of equal protection of the laws under the fourteenth amendment to the constitution of the United States.

The appeals were consolidated to facilitate the argument, made in both the hotel and hospital cases, that it is not within the police power of the state to prohibit contracts for women's daily labor in excess of eight hours in certain gainful employments where she is thrown actively into the fierce competition developed under modern social and economic conditions. Another argument common to all the appeals is that the exceptions to the protected classes and the classes left unprotected constitute denials of the equal protection of the laws to certain women. The only difference in the cases is one requiring the consideration of these common principles in relation to the different state of facts sup-

porting the several classifications. There is a sharp conflict as to certain of the facts assumed by our opponents to be of general knowledge, and an acceptance of others. These will be dealt with under the appropriate heads of the brief.

We expect to show

I. That the legislature of the State of California has the power to prevent the gainful employment of women for over eight hours a day in hotels and hospitals, and that such a restriction is not an unconstitutional denial of freedom of contract;

(a) Because the limitation of the number of hours women must work in these two employments has a direct relationship to women's health, and hence to the health of the race as a whole, as well as the safety and health of those she serves;

(b) Because women are admittedly weaker than men in the struggle of economic competition and may be protected by legislative enactment against the oppressive bargaining or control of their employer, whether arising from cupidity or such a mistaken philanthropy as that of the hospital here, which admittedly works its undergraduate girl nurses the equivalent of twelve hours a day for a six day week to make a better showing of the number of poor people cared for;

(c) Because the limitation of the number of hours of woman's labor in gainful occupations to not over a half of her waking time may check the rapid decline in reproduction of the older American stocks and in any event leaves her free for the develop-

ment of mind and body for wifehood and motherhood, and hence insures the increased intelligence and strengthening of the race through the mother, to whom (in California at least) the shaping of the child mind, the directing of his habits and the development of his character is primarily entrusted;

II. That the California statutes in question do not deny equal protection of the law because:

(a) The continuous work of women in hotels and hospitals differs essentially from the intermittent seasonal work of women in harvesting, curing, canning or drying of any variety of *perishable* fruit or vegetables;

(b) There is an essential difference between the work of women in hotels and in lodging houses;

(c) The graduate nurse belongs to a class composed of women mentally better educated, physically better trained, professionally more experienced and economically better organized to resist oppressive regulation imposed by their employers, and hence may be left free of legislative restriction in the performance of her distinctive functions in the hospital.

I-a.

The Law is a Health Law.

The relationship between fatigue—with its resulting toxics in the blood—and the health of the human body, is so well recognized that it is not necessary to refresh

the judicial knowledge of the court with citations from medical authorities and the reports of public investigation. Miss Goldmark's remarkable compilation in Mr. Brandeis' brief, referred to in *Muller v. Oregon,* gives scientific certainty to the perfectly obvious fact that if anyone works too many hours per day and per week, his health will suffer.

Muller v. Oregon, 208 U. S. 412.

Though not a necessary postulate for the controversy at bar, there can be no question that a law prohibiting the employment of either men or women for more than sixteen hours a day and seven days a week, covering all branches of gainful industry, under our competitive system, would be upheld as a proper exercise of the police power in the protection of public health. The only comment would be one of astonishment that in any American state such cruel and inhuman conditions existed that the law became necessary.

On the other hand, it is entirely conceivable that a universal four hour limitation of the hours of labor would be held to have so little relationship to health that it must be declared an inexcusable invasion of the right of contract, at least so far as it is claimed to be a health law.

The question then as to how far fatigue may be legislated against for the conservation of the health of the commonwealth and its citizens, is one of very broad legislative discretion.

The criterion by which the constitutionality of this exercise of legislative discretion is to be judged by the

court has been somewhat variously expressed. In *Hawley v. Walker*, 232 U. S. 718, in a recent memorandum opinion, sustaining a nine hour law limitation for women in millinery shops, the court relies on *Lindsley v. Natural Carbonic Gas Co.*, where the rule is laid down by Mr. Justice Van Deventer as follows:

> "1. The equal-protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.
>
> 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality.
>
> 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."
>
> *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61 at 78, 79.

Applying these criteria, upon which this court held that the state could prohibit even in a millinery shop the employment of women for over nine hours, let us examine the character of women's labor in hotels and in hospitals, with a view to determining whether the California legislature, acting in its "wide scope of discretion" is without any reasonable basis and entirely

arbitrary in assuming that it may have a deleterious effect on women's health if pursued for over eight hours a day; and whether the appellants here have sustained their burden of proof that the legislative act was essentially arbitrary and that no state of facts can reasonably be conceived to sustain "the contention that health would be affected if such work were continued for over eight hours a day".

Both the hotel and the hospital present one essential and distinguishing feature in the nature of the work of its employee—that is, that she is called upon to serve in an intimate way other human beings, under the stress of circumstances to most of them entirely unusual. The travelling public, with its necessary insistence for prompt service, its ever present element of hurry, fatigue, irritability and disease, of strange customs and offensive personal habits, accentuated by the fact that the offender is moving on and knows he will not be confronted, makes demands upon the nervous system of the woman employee in the hotel which, in its intensification of her physical and mental fatigue, clearly distinguishes her employment from domestic service in the ordinary home or boarding house. The sudden congestions due to the unexpected arrival of guests, quite likely late at night, further increase wear and tear on the nerves and afford a further basis for distinctive classification.

Can it be said, in the light of these clearly recognizable incidents to hotel operation, that a distinction in permissible hours of labor based on them is arbitrary and that they afford no rational basis for a classifica-

tion to support legislation for the protection of the health of women employees?

So too in hospitals the service is rendered to human beings in an unusual though here pathologic condition. The distinguishing thing about a hospital is that there is constantly gathered together in the wards a large number of persons in various degrees of illness. The congregating of the patients lends itself to economy in both medical treatment and nursing, but primarily in the latter, an economy bought in nearly all cases by the nervous wear and tear of the woman attendant. The same nurse must look out for many persons, the more the cheaper.

In 1911 there were in the United States 26,511 student nurses caring for hospitals having 101,708 beds. Our opponents admit that the immediate attendance of these beds is primarily the undergraduate's work. Even with a ten hour day for all the seven days of the week, this would mean an average of over nine beds for the care of each undergraduate. Probably there were more at night to fewer nurses than in the day time. Many of the hospitals did not return the numbers of patients occupying the beds, but those which did show well over sixty per cent of beds occupied.

U. S. Bureau of Education Bulletin 1912, No. 7, page 61.

In a single watch (of twelve hours apparently for the hospital in question), she may be comforting a dying man and his stunned or hysterical wife or mother, quieting or struggling with the delirious, guarding the

dangerous narcotic sleep of the sufferer of pain, measuring out drugs and medicines where the overdose means death, lifting and bathing and dressing the human body, both as a live and a dead weight, carrying heavy food trays, stand ready with sponges, instruments and absorbents during the intensely concentrated moments of the operating room, cleaning up and sterilizing the instruments after one operation, where the neglect of a fatigued woman may well mean sepsis and death in the next—all recognizable as *necessary* incidents of hospital service without any straining of the imagination of judge or legislator.

Can it be said that there is no reasonable connection between long hours of labor under these circumstances and the health of the woman performing that labor? Can this court say, that in California hospitals, one of which here naively insists that an eight hour day, six day week would unconstitutionally necessitate increasing its force fifty per cent, and hence that it is constitutionally entitled to work a nurse twelve hours a day six days a week,* there is no need for regulation for the sake of the health of their women employees? Surely, such a basis of classification is a rational one, whatever one may think about its relative advisability, and a law for the protection of the health of women employees cannot be held a mere arbitrary enactment.

Aside from the health of the nurse herself, may not the state say that in hospitals where the sick are gathered, there shall be a minimum of fatigue, that the

* Petition, folio 12.

functions of nursing shall be discharged by women fresh in mind and body, whose contact with the patient brings to him poise and calm and cheerfulness? Have we grown so completely material in our point of view that we no longer believe that the spirit and atmosphere which the nurse brings to the patient's bedside in the crowded ward, plays no part in his or her convalescence? And if we must have illustration of corporeal fact only, can it be said that an eight hour nurse will not poison fewer patients, leave septic fewer instruments, respond to the vital emergency calls with more certain promptness than that one fatigued and dulled by longer hours. It would seem self evident—at any rate it is certainly impossible for the appellants to maintain their burden of proof to the contrary, and hence the legislative classification must stand.

A necessary incident to the hospital is its pharmaceutical work. In the case at bar we are told that the woman discharging this function is engaged in it and her other labors as storekeeper more than eight hours on some days, and more than forty-eight hours in some weeks. The storekeeping requires her mornings from eight to twelve, manifestly an important function, and she must always attend. She may have been mixing prescriptions in the afternoon, evening and early morning hours before, but her sleep must be broken at eight o'clock, and she must then serve her four hours. Can it be said that there is no rational ground for limiting such hours of labor, whose functions, easily discharged in a well organized drug shop, are, under the exigencies and emergencies of the hospital, likely to

be performed by the sleepy and fatigued girl, with both injury to herself and danger to the patient?

As the court points out in the Lindsley case, the singling out of exceptional incidents within a general classification can neither support nor defeat its constitutionality. It is submitted, however, that the functions of the pharmacist appellant in the Bosley case are fairly illustrative of the peculiar risks necessarily arising from the organization of the hospital as distinguished from other establishments.

It may be well to consider here the allegations of the petition that the labor of females in hospitals is not different from the "same kind of labor done elsewhere" (Trans. folios 9, 14). As a matter of pleading this fails completely to state a cause of action because there is no allegation that the "same kind of labor" is in fact "done elsewhere". Not only is this a defect which goes to the essence of the allegation as a matter of pleading, but the court must judicially notice that it is only in hospitals that invalids are treated in large groups; that it is only there that a nurse would have, month in and month out, a half dozen invalids to attend; that it is only there that soiled linen of the sick has to be laundered continuously in large quantities throughout the year; where cleanliness and asepsis are so insisted upon in all household duties; where the floors must be scrubbed frequently, and the food cooked for such a variety of pathologic conditions, and hence at such irregular times.

If the "same kind of labor" were done "elsewhere" it could be the "same" only if arising from the needs

of a large congregation of the sick receiving medical attention—and the "elsewhere" would be but another hospital.

The service of the sick gathered in large groups is certainly not an unreasonable or arbitrary basis for a regulation concerning the health of those served or those engaged in the service.

A consideration of the decisions and statutes finds that they support with unanimity the principle for which appellees contend. The leading case is that of *Muller v. Oregon,* where the regulation by the state of women's hours of employment is sustained as a health measure on the ground that her physical inferiority renders her less able to cope with the demands on her in her struggle for subsistence. The court's position is summarized as follows:

> "The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time when she shall labor, are not imposed solely for her benefit, but also for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure and body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health on the future well-being of the race, self-reliance which enables one to assert full right and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her. We have not referred in this discussion to the denial of the elective franchise in the State of Oregon, for while that may disclose

a lack of political equality in all things with her brother that is not of itself decisive. The reason runs deeper and rests in the inherent difference between the two sexes and in the different functions in life which they perform."

Muller v. Oregon, 208 U. S. 412 at 422, 423.

The Muller case rested on a ten hour a day statute, under which the women might have worked *seventy* hours a week. On its authority there was upheld at the last term of this court a statute imposing a limitation of *fifty-six* hours a week for factories, with a maximum ten hour day. The court also sustains a provision prohibiting the working of women at any other time than that set forth in a notice to be posted in the place of employment. Such a requirement is sustained on the theory that "as it was competent for the state to restrict the hours of employment, it is also competent to provide administrative means against evasion of the restriction". It was conceded that the working of a woman six hours a day at any time other than that set forth in the notice would violate the act.

Riley v. Massachusetts, 232 U. S. 671.

At the same session of the court the constitutionality of a statute limiting the hours of labor in a *millinery* establishment to *fifty-four* hours a week, with a maximum ten hour day, was upheld in a memorandum decision, on the authority of *Muller v. Oregon.* The transcript in that case set forth the law in question as follows:

"Females over eighteen years of age shall not be employed or permitted or suffered to work in or in connection with any factory, workshop, tele-

> phone or telegraph office, *millinery,* or dress-making establishment, restaurant, or in the distributing or transmission of messages more than ten hours in any one day, or more than fifty-four hours in any one week, but meal time shall not be included as a part of the work hours of the week or day, provided, however, that no restriction as to the hours of labor shall apply to canneries or establishments engaged in preparing for use perishable goods."
>
> *Hawley v. Walker,* 232 U. S. 718.

Will it be held that, although the quiet and simple occupation of the milliner* can be limited to fifty-four hours per week as a health measure, the state has not the power to say that the health of its women employees serving the traveller or the invalid in the tense strain of the hotel or hospital, can be better conserved if limited to forty-eight hours a week? If the former be a rational regulation, if it be not arbitrary, can it be said that the appellant has sustained its burden of proof that the latter is irrational and arbitrary?

Whether hotels and hospitals in California are crowded to such an extent that the demands on their employees are liable to create oppressive conditions, is primarily a local question. Certainly the court cannot decline to notice that California is subject to great migrations of both travellers and invalids.

The question whether such women employees customarily have other domestic duties outside their regular employments is one peculiarly of local knowledge. If

---

* The milliner's work is classed with that of the hospital by appellants in the Bosley case as "Work regulated for no apparent reason affecting health" (Appendix Bosley brief 5 sheet). The Supreme Court seems to disagree with this point of view.

such be the case the wear and tear on the nerves and body of the waitress may well be much more than that from her mere employment in the hotel.

This court has shown that it is loath to disturb the decisions of the local tribunals on such matters. As was said in *Patsone v. Pennsylvania,*

> "Obviously the question so stated is one of local experience, on which this court ought to be very slow to declare that the state legislature was wrong in its facts."
>
> *Patsone v. Pennsylvania,* 232 U. S. 138;
>
> *Adams v. Milwaukee,* 228 U. S. 572, at 573.

The Supreme Court of California is well situated to take judicial notice of conditions in the hotels and hospitals of that state, and the decision of that court, that the eight hour limitation in hotels is valid is of persuasive force. Speaking of the measure as a health regulation, that court says:

> "The question of the effect of the various occupations in which women engage, upon their health, is one upon which medical men differ and with respect to which the prevailing opinion changes from time to time. It has not been, and probably never will be, a settled question, either with respect to the deleterious effects of particular occupations, or the hours of labor which measure the limit of safety in each.
>
> Women who work for others usually *have household or other domestic duties to perform which oblige them to continue at work each day for a much longer period than their time of service.* Even those who live at their places of work generally have to make and mend their clothing and do other things for their personal welfare, in addition

to the work done for their employers. In view of these circumstances affecting the generality of employed women, it could scarcely be claimed that a limitation to eight hours a day of the time of employment, in many of the occupations mentioned in the act, is unreasonable as a health regulation.

The work in hotels may not be as severe as that in some of the other places covered by the law, but considering the delicate frame of women as compared with men, we cannot perceive that the difference is so radical as to make it unreasonable to include employees in hotels among those protected by the law. Doubtless there is a limit below which the legislature cannot go. But we cannot say that eight hours of employment in work of this character *in addition to the labor necessary to be done before and afterward by the employee* is unreasonably low and beyond the legislative discretion, or that, in the present condition of common knowledge on the subject, the limitation upon the time of employment of women in hotels is so manifestly unreasonable and unnecessary for the promotion and preservation of the health and welfare of the human race that the courts can declare that the legislature had no rational ground for imposing it as a police regulation for that purpose. The responsibility, if the law is unwise, is with the legislature."

In re Miller, 162 Cal. 687, at 697.

It is submitted that as to the general question of the eight hour day in hotels this decision is practically controlling.

The action of Judges Morrow, Van Fleet and Dooling, in holding valid the eight hour restriction in hospitals, is of equal significance. Their years of experience on the bench in California, a matter judicially known to

this court, must obtain for their decision that the regulation was not unreasonable or arbitrary, great weight in a tribunal not sitting in that district.

Our opponents' brief discloses the fact that the greater part of the work of hospitals is done by the undergraduate nurses who are seeking a professional education and training in their wards and operating rooms. Statistics compiled by the United States Bureau of Education show that there were in 1911 sixty-nine of these hospitals in the United States on an eight hour basis.*

> *U. S. Bureau of Education Bulletin 1912*, No. 7, page 30.

The same Bulletin shows that California had forty-four hospitals, of which twenty-one were on a basis of a nine hour day or less and five on an eight hour day.

> *Id.*, pages 62, 63.

Commenting on the organization of hospitals and their forces of undergraduate nurses, the Bulletin says:

> "The first function of the school is the establishment of certain definite suitable requirements for admission, but the school, it must always be remembered, is the nursing staff of the hospital. The first function of the hospital is to secure enough workers of various grades to meet its daily needs, always immediate and urgent. Numbers of students it must have, whether or not they meet

* The statistics do not disclose whether or not a weekly day of rest is given the nurse, but the power of the legislature to allow a woman one free day in seven, or a total number of hours equivalent thereto, cannot be questioned. The significant thing is that in these sixty-nine hospitals, the eight hour limit in the twenty-four, is a voluntary regulation, negativing the idea that a statutory regulation of the same kind is irrational or arbitrary.

such standards for admission as the school, to retain its function, should maintain.

So long as there were few hospitals requiring students, and few professions other than teaching and nursing open to women, there were many more candidates for admission to training schools than could be received, a fairly rigid system of selection prevailed, and those who entered and remained were well qualified to meet the educational and other tests and demands of the day. But with the remarkable advances of recent years in medicine and surgery, aided by a quickening of social and philanthropic spirit widespread in its dimensions, hospitals have not only arisen in great numbers in every section of the country, but those already in existence have been steadily enlarging and expanding, and a continuous improvement and elaboration in work and technique is taking place. One thousand three hundred and sixty training schools are recorded in Sutton's Hospital and Institutional Directory for 1910. With this rapid growth in many directions has come a constantly increasing demand for students, and there is now great difficulty in securing enough to meet the needs of the hospital and at the same time maintain even the most moderate requirements for admission. *There are, it appears, not only too many hospitals in competition for the existing number of qualified candidates, but there are too many other interesting and less arduous occupations open to women to enable nursing, under present conditions, to hold its own as an attractive field.*

With very few exceptions, all hospitals, large and small, alike confess a great and increasing difficulty in securing enough students to carry on their nursing work. This is a matter of common anxiety among training-school superintendents and principals, and it is obvious that the difficulty in this direction is serious, is growing, and that it offers a great problem."

Id., page 23.

Some of the reasons why other "more interesting and less arduous occupations" are attracting away the women which the state may well desire to enter its hospitals, are apparent from this selection from the Bulletin:

> "In speaking of hours it must be remembered that these statistics refer only to practical work in ward, clinic, operating room, or other hospital department, and not to any portion of theoretical work, that the 10 hours in question are required of the student irrespective of lectures, class, or study. This practical work, also, is in many of its aspects unusually exacting and fatiguing; much of it is done while standing, bending, or lifting; much of it is done under pressure of time and nervous tension, and to a considerable degree the physical effort which the student must make is accompanied by mental anxiety and definite, often grave, responsibility. Viewed from any standpoint whatever, real nursing is difficult, exacting work, done under abnormal conditions, and all the extraordinary, subtile, intangible rewards and satisfactions which are bound up in it for the worker can not alter that fact.
>
> Ten hours, or even nine hours, of work daily of this nature can not satisfactorily be combined with theoretical instruction to form a workable educational scheme. It is futile, and it should frankly be so conceded, to offer instruction to students who are unable through fatigue to make the required mental effort, who can not, if they would, bring freshness, enthusiasm, or even intelligent interest to the subjects presented. The attention of tired students may be held by an exceptionally able lecturer for brief periods, but sustained work is out of the question. The student under these conditions not only loses the valuable knowledge which should illuminate every step of her work, but is liable through fatigue to misunderstand or mis-

interpret the instruction designed to afford her a safe basis upon which to build correct practical procedures. The direct effect of this is an immediate loss to the student; the indirect effect is a steady loss of interest in that part of her work which she can not by any possible effort find time and strength to handle satisfactorily. The importance of the practical side of her work is highly emphasized, that of the theory is minimized and belittled. It is not surprising that student nurses in training schools should eventually grow to exalt the practical above everything. It is the logical and inevitable result of the daily lessons taught them of the relative importance of the two factors in their education. Another aspect of these long hours, and one of extreme importance, is their bearing upon the health of student nurses.

Included in the special questionnaire on hours of work were questions on the average number of days of illness per student, the nature and causes of such illnesses. The replies received did not lend themselves readily to ordinary methods of tabulation, but as far as could be gathered the illnesses of students were due to one or more of the following causes: Overcrowded wards, overcrowded and unsanitary nurses' homes, overwork due to shortage of pupils, fatigue, exposure, overheating, poor food, not enough outdoor life, too little play, epidemics—these all figured as being in some measure contributory to the illnesses of students recorded in the various institutions. Of interest was the statement made in one reply that improved accommodations for more nurses brought down the number of pupils off duty on account of illness.

That long hours of ward work are, however, in most hospitals in the last analysis the main factor in causing, directly or indirectly, sooner or later, a heavy percentage of illness, those familiar with hospital life and its demands will not be disposed to doubt, and lowering the age of admission to schools becomes in its relation to prevailing hours

of work a matter of the utmost importance. Dr. Frederic Lee, whose studies of fatigue in its relation to health are authoritative, makes the point that the fatigue resulting from long hours is far more serious in its effects upon such younger candidates as are now entering our schools—of such ages, for instance, as 18, 19 and 20—than upon the older student of former years. The shorter day, therefore, is seen to be important from the standpoint of the younger student, as well as from the effects of the longer (three years') course of training.

How largely the superintendents of training schools feel the need of improvement in this direction may be gathered from the fact that over two-thirds of the replies to the questions on this subject suggested shorter hours as advisable or necessary, that a large proportion of these stated their firm belief in an 8 hour day, and that almost every reply which came showed clearly in one way or another the difficulties under which the schools were laboring in trying to carry on the hospital work with the existing number of students."

Id., pages 30-32.

In response to the claim of our opponents' brief that there is no general opinion current in this country that an eight hour limitation would protect women from ill health consequent on fatigue and confinement of their employment, we point to this government publication. *As a result of an inquiry among the superintendents of 1028 hospitals "two-thirds suggested shorter hours" and a large proportion stated their "firm belief in an eight hour day."**

* The brief of counsel is in error in its suggestion at page 57 that there was no material on the subject before the legislature at the time its committees considered the proposed bill. These statistics compiled by the United States government were amongst the many facts there presented.

In view of that concurrence of expert experienced opinion, can it be said that there is anything arbitrary in the act of the legislature in adopting their suggestion as to the time limit of the daily employment of nurses? We submit that the constitutionality of the act cannot be defeated on the ground that eight hours is an improper limitation as distinguished from the nine hours for milliners recently approved in *Hawley v. Walker.*

I-b.

The Legislature May Protect Women from Oppressive Contracts Because of Their Inferiority in Economic Competition.

We have already pointed out that the government statistics show that throughout the United States on the basis of a ten hour day, for seven days a week, there are on the average over nine beds in the care of each undergraduate in which there are, on the average, not less than five patients. It boldly claimed in the Bosley petition that the more hours of labor, the fewer nurses are required and the greater profit made, or larger service rendered the charity patients of the hospital.

It is also admitted by our opponents' brief that the preliminary training in hospitals is essential to the nurse's completion of her education. It is further admitted that the undergraduate nurse has no form of organization, guild or union to strengthen her in resisting the pressure of a hard bargainer on behalf of the hospital. Here we have all the elements tending to oppression in the making of the contract with these

young women—annually growing younger in the average age of the class.* The girl *must* pass through the hospital to get her degree and practice her profession, and will submit to burdensome and quite likely injurious conditions, to realize her ambition.

A similar situation exists as to the majority of women employed in hotels. From the character of their employments we would naturally expect a class of women who could not effectually co-operate against oppressive hours and conditions of labor, while the hotel men's organization, both national and local, is very powerful.

The right of the state to protect its citizens, particularly its women and children, from oppressive bargainers has been repeatedly recognized by this and other American courts. In one of the leading cases this court said:

> "The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desires to obtain as much labor as possible from the employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases, self-interest is often an unsafe guide, and the legislature may properly interpose its authority."
>
> *Holden v. Hardy*, 169 U. S. 366, at 397.

---

* See Report of Bureau of Education, p. 28.

In *Muller v. Oregon* the court applies the above principle to the case of women employees, speaking generally of the sex, as follows:

> "Still again, history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control, in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the schoolroom are open and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs, it is still true that in the struggle for subsistence she is not an equal competitor with her brother.
>
> "Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right. Doubtless there are individual exceptions, and there are many respects in which she has an advantage over him; but looking at it from the viewpoint of the effort to maintain an independent position in life, she is not upon an equality. Differentiated by these matters from the other sex, she is properly placed in a class by herself and legislation designed for her protection may be sustained even when like legislation is not necessary for man and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions of political, personal or contractual rights were taken away, and she stood so far as statutes are concerned, upon an absolutely

equal plane with him, it would still be true that she is so constituted that she will still rest upon and look to him for protection; that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race, justify legislation to protect her from the greed as well as the passions of men."

Muller v. Oregon, 208 U. S. 412, at 422, 423.

The Supreme Court of Nebraska has stated the principle involved in a much cited decision upholding such an act including hotels in its provisions, as follows:

"Women and children", said the court, "have always to a certain extent, been wards of the state. * * * On the question of the right to contract, we may well declare a law unconstitutional which interferes with or abridges the right of adult males to contract with each other in any business affairs or vocations of life. The employer and the laborer are practically on an equal footing but these observations do not apply to women and children. Of the many vocations in this country, comparatively few are open to women. Their field of remunerative labor is restricted. Competition for places therein is necessarily great. The desire for place, and in many instances the necessity of obtaining employment, would subject them to hardship and exactions which they would not otherwise endure. The employer who seeks to obtain the most hours of labor, for the least wages, has such an advantage over them that the wisdom of the law, for their protection cannot well be questioned. No doubt, these questions were the moving cause for the passage of the law in question."

Wenham v. State, 65 Neb. 395.

It is submitted that there is nothing arbitrary or irrational in the legislature saying: "We will protect

these young nurses and other women serving the traveller or the sick from the cupidity or the excessive demands of any sort which, otherwise, the superior economic position of the hospital or hotel management may make it impossible for them to resist.''

I-c.

The Very Rapid Decline in Reproduction of Second and Third Generations of Americans, Coincident With the Entry of Women Into Economic Competition, as Well as the Natural Function of the Mother in the Home Making and the Rearing and Educating of Children, Warrant the Legislature in Restricting the Number of Hours She Shall be Engaged in Matters Which Consume Her Energies Elsewhere.

What we have before said applies chiefly to the employment of women in hospitals and hotels, and we take it as elementary that this court would hold the act good as to these two of the several distinct classes enumerated, even if it might in other litigation fall as to the various others. We now consider briefly the law as an act applying to all women in gainful employment.

The prime function of the woman in our civilization is the bearing and rearing of children, and the making of the home. At the adoption of the Constitution it was practically her only function in the community, and while at the time of the passage of the 14th amendment there were some women in the factories in the North Atlantic states, they constituted a very small proportion of the total female population.

Since that time the third generation of Americans have almost ceased to reproduce their race. Our great

increase in population has come from the emigrant and his children. His grandchildren are rapidly approaching racial sterility. At the same rate of decrease it will not be long before there will be less than two children to the married couple of the older American stocks. That is to say, simultaneously with the entry of the American woman generally into the strife of the economic world, she has lost her power of reproduction.

It is not our purpose to engage in a discussion whether our feverish economic activity is the *causa causans* or the *causa sine qua non,* or any cause at all of what, if it is not checked, means the speedy extermination of Anglo-Saxon stock in America, and the substitution in its place of the Mediterranean and West Asiatic races. Nor does it concern us whether the substitution may or may not be racially advantageous. But can it be denied that all thinking men are inclined to believe that there is a profound relationship between the nervous tension of the life of our modern professional and working woman and her preoccupation with outside affairs, and the decline in the reproduction of those Americans who belong to the North and West European stocks?

If this be the case, it surely cannot be that the 14th Amendment has deprived our state government of the power to prevent the suicide of what is, historically at least, the most important portion of its population. That amendment has truly been put to strange and wondrous uses, possibly no more surprising if suggested to its framers, than the statement that the prolific American race as they knew it in the sixties would seem to

be dying a half century later. But in view of the tendency of recent adjudication, we must presume that the state has never been deprived of the power, it undoubtedly has, to preserve its racial continuity.

Referring to the statement of the rule for determining the constitutionality of state laws as expressed in the Lindsley case, i. e., that if "any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was made must be assumed" are we not compelled to consider whether or not the California Legislature in passing a restrictive act which covers practically the whole field of women's economic activity had this very purpose in view, i. e., to save an important element in the American race from extinction. Once we get over the shock of the realization that there is strong evidence that it is doomed to extinction, this explanation of the state's motion ceases to seem either fanciful or arbitrary.

Certainly there is nothing in the brief of our opponents which suggests that it can sustain their burden of establishing that it is not a reasonable explanation, and that it was not one of the considerations that moved the state to the enactment of the law.

But even supposing that the American mother of the third and succeeding generations continues to give two or more adults to the world, her normal function to society is fully performed, only if she has made a home for them, superintended their proper education and passed on to them such culture as she has acquired herself. If

devotion to business means an impairment of the power to discharge this function, then her right to contract to employ herself outside the home must be subordinate to the right of the state to induce her to spend more of her time there. It is submitted that to deny to the states the power to enact such legislation would strike at the very vitals of our civilization.

II-a.

The Continuous Work of Women in Hotels and Hospitals Differs Essentially from the Intermittent Seasonal Work of Women in Harvesting, Curing, Canning and Drying of Perishable Fruits and Vegetables.

The remaining sections of our brief consider the question of improper classification, and the alleged failure to give to the women outside and within the classifications equal protection of the laws. There is no real dispute between us as to the law on this point. If our opponents can maintain their burden of proof under the Lindsley case, that any of the classifications of the woman's industry is not germane to the purposes of the act, then the act is invalid to that extent. We take it that the following propositions of law are conceded: (a) That the burden of proof is on the person seeking to set aside the legislative enactments to show that it is irrational and arbitrary; (b) That the classification to be valid need not have "mathematical nicety" and may stand even "if in practice it results in some inequality".

Lindsley v. Natural Gas Co., 220 U. S. 76, 79.

The question as to the right to classify according to employer's general business seems foreclosed by the three decisions of this court on woman's hours of labor. In all of these the classification as to factory or millinery shop is held valid although obviously the work of stenographer and clerk in such places is not unlike that in institutions not included.

Muller v. Oregon, supra;
Riley v. Massachusetts, supra;
Hawley v. Walker, supra.

It would seem obvious that the character of the strain in the service of hotels and hospitals differs so essentially from the incidents of harvesting, curing, canning and drying of fruits, even if the latter were not intermittent industries, that the legislature might well act for the protection of women in the one, while it was still investigating the necessity for it in the other.

Ten other states have made such a distinction in their statutes. They are:

Delaware	Law	1913	p. 424;
Illinois		1913	360;
Michigan		1911	384;
Maryland		1912	141;
New Jersey		1912	377;
Oregon		1911	488;
Pennsylvania		1913	1024;
Utah		1911	265;
Virginia		1912	357;
Washington		1911	131.

An earlier Illinois law, with a similar provision, was considered by this court at its last session. The statute reads as follows:

> "Females over eighteen years of age shall not be employed or permitted or suffered to work in or in connection with any factory, workshop, telephone or telegraph office, millinery, or dress-making establishment, restaurant, or in the distributing or transmission of messages more than ten hours in any one day, * * * provided, however, that no restriction as to the hours of labor shall apply to canneries or establishments *engaged in preparing for use perishable goods.*"

While the opinion is a mere memorandum, it cannot be that the court overlooked this provision and inadvertently held the statute valid.

Hawley v. Walker, 232 U. S. 718.

The obvious distinction between the seasonal character of the work of the excepted industries has been the basis of two other decisions sustaining the law. The Supreme Court of California, in the Miller case, said:

> "We cannot say that the exemption of persons employed in harvesting, curing, canning, or drying perishable fruits or vegetables from the operation of the law, makes it an improper discrimination. These occupations can be carried on only for a short period of each year, the time of the annual ripening of the particular fruits or vegetables. In a cannery devoted to every kind of fruit and vegetable the work may continue much longer, but even those establishments are idle for a large part of the year. There is time for those employed therein to obtain rest and recuperation. It is also to be noted that, looking to the general welfare, there is a greater necessity for facility in obtaining

> employees to do such work than obtains in ordinary employments, for, unless the work is done at the proper time, great loss must ensue from the perishable nature of the products to be preserved. These are all matters which the legislature could properly take into consideration, and they constitute a sufficient justification for the exception. (See State v. Somerville, 67 Wash. 638, [122 Pac. 324], where it was held that a similar exception did not vitiate the women's eight hour law of the state of Washington.)"
>
> *In re Miller,* 162 Cal. 687, at 700.

The finding of the local tribunal on the facts would seem to be final, as far as this point is concerned, even in the absence of the wide recognition of the wisdom of the exception in the laws of other states.

As to the argument that women in agricultural pursuits should have been included in the act it is sufficient to say that there is no evidence that any but an inconsiderable number of women engage in agricultural labors in California. The sentiment against it is so strong that even the women immigrants of the vigorous South European peasantry are never known to work in the fields for wages.

II-b.

There is an Essential Distinction Between the Work of Women in Hotels and in Lodging Houses and the Home.

The Supreme Court of California has this to say about the distinction between the hotel and the lodging house:

"In the matter of numbers there appears to be no ground for distinction. But there are other obvious differences. The patrons of lodging houses and boarding houses use them as places of residence. They are for the most part permanent occupants. Such places partake more of the nature of a home or residence than does a hotel. They are not accessible, as of right, to the public generally, as is the case with hotels. The occupants may be and often are selected by the proprietor, and frequently they compose a class having similar habits, tastes, and desires. An acquaintance arises between them and the servants and the servants soon become accustomed to the wants and ways of those by whom their services are required. The occupants of a hotel are of a more transient character. They come and go and change daily. They are usually entire strangers to the servants. Their habits are likely to be irregular and of great diversity as well as unfamiliar to the employees. These respective conditions must, or at least may, make the work of such employees in the other places materially different from those similarly employed in hotels. It is not unreasonable to suppose that those in the other places will be subject to less strain and tension than those who serve the more transient, varied, and indiscriminate guests of hotels, to whom they are generally entire strangers. The legislature, in view of all the above facts, may reasonably have so determined. In support of the law, as already stated, the courts are bound to presume that it did make this decision, and as there are sound reasons upon which it may rest, the decision must be accepted as correct. The conditions stated appear to be a sufficient basis for the classification made. In such matters the legislature cannot deal with individual cases. It can provide only for classes, and its decision as to the line of cleavage between classes in some particulars the same and in other particulars different must be upheld where it is based on any reasonable

grounds. We are of the opinion, therefore, that the law cannot be declared invalid because of this discrimination."

Ex parte Miller, 162 Cal. 687 at 699.

The Supreme Court of Illinois supports the distinction on the following ground:

"There is a marked distinction between hotels and boarding houses. A hotel is a quasi public place, and it is within the province of the police power to regulate occupations or business enterprises of a quasi public nature, such as, if unrestricted in their exercise, may be injurious to the health, safety, or general welfare, even though the business is perfectly lawful. This power is so important and comprehensive that its application must be allowed to expand from time to time, to meet new conditions and promote the public welfare. The proprietor of a hotel is engaged in a public business. The demands made upon the employees come from the public and are not altogether dependent upon or controlled by the employer. The unceasing change of guests requires constant attention and continuous effort to supply their wants and satisfy their needs. The speed with which the employees act, and to a large extent the manner of performing their work, are controlled by the public. The pressure of work comes from sources independent of the employer. No method of regulating the demands of the public under such conditions is practicable, but the time such demands may be made upon the employees may be limited. We are of opinion the nature of the business is such as to afford a valid basis for classifying work in hotels as an occupation authorizing its inclusion in the law limiting the hours of labor for females. The pressure and tension under which the labor is performed afford as reasonable a basis for classifica-

tion as the work done in lines of employment where machinery is used."

People v. Elerding, 98 N. E. 982 at 985.

We can add nothing to the reasons set forth in these opinions save to say that Colorado, Idaho, Illinois, Kentucky, Nebraska, Oregon, Texas, Utah and Washington have said that the women employees in hotels need the protection of a shortened day and none has said it of those working in lodging or boarding houses.

II-c.

The Graduate Nurse Belongs to a Class Composed of Women Mentally Better Educated, Physically Better Trained, Professionally More Experienced, and Economically Better Organized to Resist Oppressive Requirements Imposed by Their Employers, and Hence She May be Left Free from Legislative Restriction in the Performance of Her Distinctive Functions in the Hospital. She is the Better Fitted to Cope With Those Emergencies Arising in the Operating Room and Ward, Which Often Require Attention for More Than the Eight Hour Period and Hence Her Exception from the Rule Provides for Such Emergencies.

In the first section of this brief we have shown that the incidents necessarily accompanying the treating of large numbers of sick under hospital conditions, warrant legislation to prevent injury to both patient and employee arising from excessive fatigue and nervous strain. In considering these incidents, it becomes apparent that some exceptions to a general limitation of the hours of labor of hospital employees may well be made, to meet the emergencies of the ward and operat-

ing room which may require attendance on certain patients over the eight hour period.

The California legislature has done this by excepting the "graduate nurse" from the operation of the law. The question therefore again arises, as to whether the appellants have maintained their burden of proof that there is no state of facts rationally conceivable, which may exist to warrant this classification for an exception from the law, even though it be not scientifically accurate in its boundaries.

The graduate nurse is as well recognized in the profession of nursing as the admitted practitioner in the profession of the law. Contrary to the impression sought to be conveyed by appellants' brief, the training for that profession in its essentials is identical throughout the United States. The number of such training schools for nurses officially recognized by the Bureau of Education exceeds that of the law school. There were in 1911, one thousand and forty-eight such schools.

U. S. Bureau Education Bulletin, 1912, No. 7, p. 61.

All of this large number *save seven* require a course of *two years* or over before the granting of a degree.

Ibid, tables pp. 61-91.

In California, of the 44 schools *every one* reported requires a course of at least two years, and 35 require a course of three years.

Ibid, pp. 62, 63.

In a very large percentage there is an educational requirement for entrance.

Ibid.

In nearly all there is an age limit, both as to youth and maturity. In nearly all the graduate nurse must be over 21 years of age.

Ibid.

In the great majority of cases, the *entire* course of training is under the immediate supervision of the hospital and within its confines. In some instances the student is sent into private families for a part of her experience.

Ibid.

The students are under the discipline of the hospital for not less than eight hours a day and in many cases reside in the hospital and are never out of its atmosphere.

Judicial notice must be taken of the fact that amongst all the women in occupations outside the home, the graduate nurse is recognized for her quiet efficiency, her industry, her self control, her dignity and force of character. The continuous responsibilities of the sick ward, assumed under strict hospital discipline, during the formative mental period of these young women and the esprit de corps of their large group, with its common training, ambitions, dangers, trials, successes and failures, have set them apart, as a class, from all their sisters.

Naturally we would expect the graduate to perform a different and more responsible function in the hospi-

tal than the student, and this is very frankly admitted by appellants' brief. On page 23 we find the following contrast between the two classes:

> "The natural result of these conditions is that in hospitals the principal part of the work of nursing is done by the student nurse; the graduate nurse is usually employed in the operating room in the capacity of an assistant to the surgical staff. In the hospital wards the graduate nurse acts as a superintendent or director of the work of the nurses. But most hospitals conduct departments for the treatment of the rich as well as the poor, and as the wealthier classes frequently demand the services of a graduate nurse, the hospitals do employ graduate nurses to care for members of the wealthier class willing to pay the increased charge incident to such service, a charge varying from twenty-five dollars to thirty-five dollars a week for nursing alone."
>
> Appellants' Brief, p. 23.

That is to say it is customary in hospitals to have, as *chief* of the nurses in the operating room and hospital ward, a graduate nurse. If any emergency arise, such as the continuance of an operation over the period of eight hours service, the graduate nurse, with no limitation as to her time, is there to assume the responsibility.

Can the appellants, in view of this admission of their brief, successfully maintain their burden of proof that it is irrational to say that the graduate nurse, being especially fitted to meet the occasional emergencies of the hospital likely to call for services extending over a total employment of eight hours a day, shall not be limited to that time while other employees shall? We

submit that no clearer ground for legislative classification can be conceived.

Appellees in the hospital appeals, agree with appellants' contention (brief p. 52) that the law limits the hours of labor for a single employer only. It therefore does not affect the female physician or surgeon employed by several individual patients over the restricted period. However, even if employed by the hospital, the state could well say that the woman physician shall not assume the important responsibilities of diagnosis and treatment, or the trying duties of actual operation, for longer than eight hours, while saying that the trained nurse who has none of *these* functions, may work for the longer period. There certainly is not the identity of function between the graduate nurse and the physician that is referred to in

Cotting v. Kansas or
Connolly v. Union Pipe Co.

The court might not agree with the legislature as to the wisdom of so legislating for such a distinction as to female physicians, but the distinction clearly exists, it bears a logical relationship to the health of both physician and the patient she is operating on or prescribing for, and the court cannot declare it unconstitutional.

Quong Wing v. Kirkendall, 223 U. S. 59;
Lindsley v. Natural Gas Co., supra.

In addition to these clear grounds of distinction for the classification of graduate nurses and their exception from the act, our opponent points out another which, in itself, is sufficient, under the principles recognized by

this court, to bring it within the constitutional powers of the legislature. It is the superior economic position of the trained nurse over all other women in the hospital in meeting oppressive exactions attempted in the bargaining leading to their employment. How vastly superior is her economic value is seen from the admission quoted above, that her services were paid twenty-five or thirty-five dollars a week against the ten or twelve and a half dollars per month of the undergraduate. This superior economic value necessarily gives her a far greater independence in her relationship with her employer.

Appellants tell us also that she has far greater political power, through her organization, successful no doubt because of the esprit de corps developed from the community of interest and experience we have described. Speaking of the power to affect legislation, the brief says:

> "Of the various classes of persons usually employed in hospitals, graduate nurses alone are organized."
>
> Appellants' Brief, p. 7.

We have before suggested the conditions likely to lead to oppressive bargaining with the undergraduate nurses. It is clearly within the rule laid down in

Holden v. Hardy, supra;

Muller v. Oregon, supra;

Wenham v. State, supra,

that the legislature may protect woman from her weakness and inferiority in coping with the cupidity and

hard bargaining of some employers, to say that it may except from a class of women to be protected, those whose economic power and independence place them on a more equal footing in the transaction?

Can it be said that appellants have maintained their burden of proof that in California the graduate nurse has not these differences of professional capacity, sound judgment and economic power and independence, which so obviously would warrant leaving it to her to fix the hours of her employment?

We are unable to see how the decision in *Smith v. Texas* has any application to the exception of the graduate nurse from the eight hour law for women. In the Smith case the brakemen only were allowed to become conductors, and it was held that this denied equal protection of the laws to the engineer, who was equally qualified to discharge a conductor's duties. But by this law no one is prevented from becoming a graduate nurse. The distinction in her customary function and in her independence and stronger economic position *admitted by our opponent,* are sufficient explanation for the *exception* of the nurse from *restrictions* of the act which has, as its main purpose, the protection from abuse of women already *in* their particular employments, not the exclusion of anyone from entering them. Certainly the exception of graduate nurses has far more obvious reasons to support it than the distinction between a mine employing nine men and one employing ten in *McLean v. Arkansas,* 211 U. S. 539, 547, or between the establishments where two women are allowed

to engage in the laundry business and those having more,

Quong Wing v. Kirkendall, 223 U. S. 59,

or between bituminous mine owners, who are required to widen the entrances of their shafts and block coal miners, who are not,

Barrett v. Indiana, 229 U. S. 26,

or between foreigners, who may not keep weapons to hunt game and native born, who may.

Pastone v. Pennsylvania, 232 U. S. 138.

It is therefore submitted that the graduate nurse is a proper exception to the classification and that the act is constitutional as to hospitals as well as hotels.

Conclusion.

There are many interesting points raised by the briefs filed which we have not seen fit to touch upon, however interesting from an academic standpoint. For instance, the alleged abuse of political power by various classes of employees organized for their mutual protection or benefit. The hard worked menace is continually invoked in both briefs, sometimes subtly, sometimes baldly, to influence the court in its interpretation of the law. There is no evidence of such abuse of power nor is it competent to show that the legislature acted under such coercion.

Doyle v. Continental Ins. Co., 94 U. S. 535.

We have not considered these suggestions nor many others for the reason that we regard them as relevant, only if it be shown that these classifications of woman's labor are irrational and arbitrary with reference to their effect on the health of the woman employee, or the traveller or invalid she is serving.

We submit that not only have appellants failed in their burden of proof of irrationality, but that the court has within its judicial knowledge, sufficient facts for the finding that the provisions of the law are not only not unwise, but actually serve recognized needs, which in their importance to the state transcend the individual's claim to the right of freedom of contract.

Dated, San Francisco,
November 28, 1914.

U. S. WEBB,
Attorney General for the State of California,
Attorney for Defendant in Error.

WILLIAM DENMAN,
G. S. ARNOLD,
Attorneys for Defendant in Error and Appellees.

WILLIAM DENMAN,
Counsel for Defendant in Error and Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 904
No. 905

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and ETHEL E. NELSON,

Appellants,

vs.

JOHN P. McLAUGHLIN, Labor Commissioner of the State of California, JOHN KEAN, Deputy Labor Commissioner of the State of California, and JOHN J. TOBIN, Deputy Labor Commissioner of the State of California; W. H. L. HYNES, District Attorney of Alameda County, State of California,

Appellees.

MOTION TO ADVANCE.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners and Appellants respectfully request that the hearing of the appeals in the above entitled cause be advanced.

Statement of Matter Involved.

These appeals involve the validity of an Act of the Legislature of the State of California, approved June 12th, 1913, in effect August, 1913, by which it is provided that, subject to the exceptions stated, no woman shall be employed for more than eight hours in any one day, or forty-eight hours in any one week, in any of the following places:

(1) Manufacturing establishments;
(2) Mercantile establishments;
(3) Hotels;
(4) Apartment houses;
(5) *Hospitals;*

and certain other designated places, *or by* any

(a) Express Company, or
(b) Transportation Company.

The exceptions to the statute are:

(1) Graduate nurses in hospitals, and
(2) Women engaged in canning, curing, drying or harvesting perishable fruits or vegetables.

Both appeals, one being from the order refusing a preliminary injunction, the other from the final judgment, involve the right of a woman (who is not a graduate nurse) to work in a hospital for more than the prescribed period.

Appellant, Ethel E. Nelson, a graduate pharmacist, together with the hospital Trustees, contend:

(1) A law limiting the hours of labor in hospitals of graduate physicians, graduate pharmacists, experienced nurses and all other women except *graduate nurses* is purely arbitrary and offends against the guaranty of equal protection

of the laws, even if a general law of the same character, applicable to all alike, could be sustained.

(2) The exception of *"graduate nurses"* cannot be justified on the ground of occupation, because the exception is limited to *graduates*. Experienced nurses are not embraced in the exception, and even if an educational qualification be a legitimate basis for such an exception, which appellant disputes, no true educational qualification has been prescribed. No standard of education is prescribed by the statute, and any woman who has received a certificate of graduation from any self-constituted training-school or hospital answers the description of "graduate nurse."

(3) The law under consideration is not a legitimate exercise of police power. The classification on which it is based demonstrates that it was not enacted as a health measure, for "mercantile establishments," "apartment houses," and other places mentioned in the Act, have no peculiar relation to the health of those working therein, nor does the fact that the employer is an *express company* affect the health of its employees. Even if it be assumed that police power may be exercised to improve the economic status of a class, still this statute cannot be supported because the law is based on a classification which has no true relation to that object.

(4) A law limiting the right of a woman to work at healthful occupations under normal conditions to forty-eight hours in any one week, and eight hours in any one day, and making no allowance for emergencies, is an arbitrary restriction on liberty, and cannot be supported as a proper exercise of the police power.

Reasons for Application.

This is a test case. Until decided, the hospitals are placed in a position of disobeying the law at their peril, or increasing the cost of maintenance about twenty-five per cent., for such is the effect of compliance with the law. If the Act be upheld it

will become necessary for hospitals to re-organize their staff and training schools. This requires a large expenditure of capital. The present cost of complying with the law is excessive, but the expenditure necessary to more economical operation cannot be properly made until the final decision of this cause, for if appellant is successful in this appeal the capital so invested will be wasted. Many hospitals have not sufficient funds to continue on their existing scale and comply with the law. Owing to the heavy cost entailed by the Act, the "Children's Hospital" has been obliged to close its *contagious ward* and other hospitals will be obliged to curtail the free treatment of the poor. The great majority of the hospitals are charitable institutions, and the effect of the law is to restrict the field of charitable work and divert the funds to the payment of increased wages.

The hospitals are absolutely without remedy to recover moneys expended through compliance with the law, and the restriction of the charitable work done by hospitals will cause suffering which cannot be repaired. For these reasons not personal to themselves, petitioners respectfully move that this cause be advanced.

CHARLES S. WHEELER and
JOHN F. BOWIE,
Counsel for Petitioners and Appellants.

IN THE SUPREME COURT OF THE UNITED STATES.

WILLIAM B. BOSLEY, PETER L. WHEELER and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and ETHEL E. NELSON,

Appellants,

vs.

JOHN P. McLAUGHLIN, Labor Commissioner of the State of California, JOHN KEAN, Deputy Labor Commissioner of the State of California, and JOHN J. TOBIN, Deputy Labor Commissioner of the State of California, composing and constituting the Bureau of Labor Statistics of the State of California; W. H. L. HYNES, District Attorney of Alameda County, State of California,

Appellees.

Nos. 904-905.

To the above named Appellees, and to Albert T. Roche, Esq., and Walter J. Burpee, Esq., their attorneys:

You, and each of you, will please take notice that the appellants will on the 16th day of March, 1914, at the opening of Court on the morning of that day, move the above entitled Court to advance the hearing of the above entitled appeals.

Said motion will be based upon the statement of the importance of an early decision as set forth in the foregoing motion, which will at that time be presented to the Court.

Charles S. Wheeler
John B. Bowie
Attorneys for Appellants.

The undersigned join in the request that the cause be advanced and consent that the motion be granted.

Albert T. Roche
R. Lister
W. Burpee

H. S. Webb

FILED
JAN 9 1915
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

Nos. 362 and 363.

WILLIAM B. BOSLEY, PETER L. WHEELER, AND SAMUEL H. BUTEAU, TRUSTEES OF "THE SAMUEL MERRITT HOSPITAL," AND ETHEL E. NELSON, APPELLANTS,

vs.

JOHN P. McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA; JOHN KEAN, DEPUTY LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, AND JOHN J. TOBIN, DEPUTY LABOR COMMISSIONER OF THE STATE OF CALIFORNIA; W. H. L. HYNES, DISTRICT ATTORNEY OF ALAMEDA COUNTY, STATE OF CALIFORNIA, APPELLEES.

APPELLANTS' REPLY BRIEF.

J. F. BOWIE,
For Appellants.

INDEX.

List of Cases.

	Page
Lindsley *vs.* Natural Carbonic Gas Co., 220 U. S., 61, 78	13
Matter of Miller, 162 Cal., 687	12–21
Minnesota *vs.* Barker, 136 U. S., 313	16

List of Statutes.

Act providing for registration of certain graduate nurses, Stat. of Cal., 1913, p. 613	5

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

Nos. 362 and 363.

WILLIAM B. BOSLEY, PETER L. WHEELER, AND SAMUEL H. BUTEAU, TRUSTEES OF "THE SAMUEL MERRITT HOSPITAL," AND ETHEL E. NELSON, APPELLANTS,

vs.

JOHN P. McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA; JOHN KEAN, DEPUTY LABOR COMMISSIONER OF THE STATE OF CALIFORNIA, AND JOHN J. TOBIN, DEPUTY LABOR COMMISSIONER OF THE STATE OF CALIFORNIA; W. H. L. HYNES, DISTRICT ATTORNEY OF ALAMEDA COUNTY, STATE OF CALIFORNIA, APPELLEES.

APPELLANTS' REPLY BRIEF.

PART I.

Reply to Brief of the Attorney General of California.

In the brief filed by the Attorney General of the State of California certain statements are made which may lead to error and were doubtless due to the fact that counsel mis-

understood the report of Miss Nutting, published as Bulletin No. 7, U. S. Bureau of Education, 1912.

On page 19 of the respondents' brief it is said:

> "Statistics compiled by the United States Bureau of Education show that there were in 1911 sixty-nine of these hospitals in the United States on an eight-hour basis."
>
> *U. S. Bureau of Education Bulletin,* 1912, No. 7, page 30.

This statement is obviously due to a complete misunderstanding of the article quoted. There is not now and never has been a hospital in the United States operated on the eight-hour basis. There were in the year 1911 sixty-nine hospitals in which the ward duty of student nurses in the daytime was customarily eight hours; but, as we are informed, that not less than fifty-seven of these same hospitals required ten hours' ward duty from student nurses taking the night watch. So far as we are aware, no hospital has ever attempted to operate on an eight-hour basis as far as persons other than student nurses are concerned.

The article in question deals with the education of the student nurse. Lack of experience with the subject-matter has misled counsel, not only in the particular mentioned, but in other particulars hereafter pointed out.

THERE IS NO BASIS FOR THE EXCEPTION OF GRADUATE NURSES FROM THE OPERATION OF THE STATUTE.

The brief of the respondent seeks to justify the provisions of the statute limiting the hours of labor of all women in hospitals, except graduate nurses, by asserting that:

> "The graduate nurse belongs to a class of women mentally better educated, physically better trained and economically better organized to resist oppressive regulation by her employer."

An examination of this claim in detail shows the absence of justification for the exception.

THE GRADUATE NURSE DOES NOT BELONG TO A CLASS OF WOMEN BETTER EDUCATED THAN OTHER CLASSES, MEMBERS OF WHICH HABITUALLY WORK IN HOSPITALS.

Respondent declares:

> "The graduate nurse is as well recognized in the profession of nursing as the admitted practitioner in the profession of law. Contrary to the impression sought to be conveyed by appellants' brief, the training of that profession is in its essentials identical throughout the United States. The number of such training schools for nurses officially recognized by the Bureau of Education exceeds that of law schools. There were in 1911 one thousand and forty-eight such schools."
>
> *Respondent's Brief*, p. 38.

The claim that graduate nurses compose a class as well recognized as admitted practitioners in law does not necessarily carry with it an assertion of any particular standard of educational fitness, but, in spite of this, the statement is not well founded. The assertion that the training of the graduate nurse is in its essentials identical throughout the United States can be explained only on the hypothesis that the actual education of the women comes from experience

alone. This is unfair to the better-educated members of that class.

Bulletin No. 7, published by the United States Bureau of Education in 1912, contains an excellent article on the Educational Status of Nursing. This article shows, and the facts are doubtless within the realm of judicial notice, that there is no standard, either in course of instruction or period of instruction, common throughout all of the United States, or, indeed, throughout any one of the States.

As stated in our opening brief, a graduate nurse differs from an experienced nurse only in matter of education. The schools (except correspondence schools) by which this education is given belong to or form part of hospitals, and were and are conducted primarily for the benefit of the hospital. Recent statistics show that out of 700 schools only six were conducted for purely educational purposes, the rest being, in a sense, proprietary.

Bulletin No. 7, U. S. Bureau of Education, 1912.

In 1912 there were in existence something like 1,100 schools for the training of nurses, yet it is the fact that this number embraced every character and description of school from the departments of universities to the correspondence school, and included a large number of schools which were attached to small private hospitals in which women received practically no education whatever, being given merely a diploma in exchange for from one to three years' service. But even in the public or purely charitable hospitals, theoretical education generally consisted of unrelated lectures for a period of not more than two hours a week. The course of study varied from one to three years, and still varies to that extent. Many hospitals of such limited size that no adequate experience in nursing the sick could be gained therein, nevertheless, conducted, and still conduct, training schools; and hospitals devoted to the work of the specialist did the same thing.

Bulletin No. 7, U. S. Bureau of Education, 1912.

The result of all this was that the mere fact that a woman was a graduate nurse meant practically nothing. This has been generally recognized in America. Accordingly thirty-one States passed laws providing for the registration of graduate nurses, but only after the passage by them of certain examinations, these laws providing, in general, that only such women who had graduated from a "registered," "approved," or "chartered school" connected with a hospital in good standing were eligible for examination. In the State of California it has been recognized that the mere fact that a woman is a graduate nurse is by no means sufficient to mark her as peculiarly qualified by education or experience to care for the sick. By the act of 1913 it is provided:

> "Within 30 days after this act takes effect the State Board of Health shall establish and maintain a department for the *examination* and *registration* of *graduate nurses.*"

The statute then provides for the appointment of a director of the department, and that director is required to make lists of *accredited training schools* for nurses.

The act then provides that applicants for registration shall, if they apply prior to July 1, 1914, be registered without examination if they

> "have graduated before that date from *a reputable training school connected with a general hospital.*"

If application be made after 1914, it can only be granted after examination, and no person is eligible for examination who has not graduated from an accredited training school. And the act continues:

> "An accredited training school for nurses is hereby defined to be a school for the training of nurses attached to or operated by or in connection with a hospital giving a general training and a systematic theoretical and practical course covering a period of at least three years."
>
> *Statutes of California*, 1913, p. 613.

By providing that only such graduate nurses as have graduated from a training school connected with a *general hospital* are eligible for registration the legislature has not only defined the term graduate nurse as including the graduates of any training school (the generally accepted meaning of the term), but it has also recognized the absence or want of a common standard of education in training schools, and the further fact that among the class included within the term graduate nurse fall persons of no particular education or experience in taking care of the sick. This brings all these matters well within the realm of judicial knowledge, constituting as it does a legislative recognition of existing facts. (See S. F. Savings Union *vs.* Reclamation Dist. 124, 144 California, 639, 645.

The truth is that a registered nurse is a member of a class somewhat similar to that to which one admitted to practice at the bar belongs. A graduate nurse is, however, a member of a class no more clearly defined than that of graduates of any special type of private medical schools. But even if this is not a fair comparison, the claim that a graduate nurse belongs to a class better educated than other classes whose members work in hospitals is unfounded. The graduate and licensed physician, the graduate and licensed pharmacist, and other women of high scientific training habitually work in hospitals, and are all members of classes more highly educated than the class to which the graduate nurse belongs.

THE CONTENTION THAT THE GRADUATE NURSE BELONGS TO A CLASS PHYSICALLY BETTER TRAINED THAN OTHER WOMEN WORKING IN HOSPITALS IS NOT WELL TAKEN.

The graduate nurse, as she exists today, is the product of a system of teaching lacking in uniformity in period of instruction, character of study, and course of work. The difference between the graduate nurse and the experienced nurse is a difference in theoretical education only, and this difference does not form a premise upon which the conclu-

sion that the graduate nurse is the physical superior of the experienced nurse can rest. There is absolutely no difference in physical training between the graduate nurse and other women. If special physical training might be implied from vocation, no difference could be found between the graduate and the experienced nurse. Indeed, the claim that the class of graduate nurses, as it exists today, is physically superior to other women working in hospitals, seems somewhat out of place in respondents' brief. Until the law in question was enacted, such graduate nurses as existed were the product of the system under which ten hours' duty was done by the student, a system which respondents claim subjected the women to such fatigue and strain as to necessitate legislation limiting the hours of labor to 48 hours a week and eight hours a day, in order to protect the health of the women themselves. It is, therefore, somewhat surprising to find the claim that the class whose health had been most severely abused under the old system is excepted from the restrictions imposed by the new system for the reason that they are peculiarly *fit physically*. One could hardly assume that the old system would bring about that result, if, in fact, the regulation to which it is now subjected be justified. As a matter of fact, there are no physical characteristics peculiar to graduate nurses.

THE CLAIM THAT THE GRADUATE NURSE IS PROPERLY EXCEPTED BECAUSE SHE IS A MEMBER OF AN ORGANIZATION DOES NOT IN LAW AFFORD A BASIS FOR CLASSIFICATION.

It is a fact that some of the graduate nurses in California are organized. It is also a fact that the political power incident to this organization is responsible for the exception of graduate nurses from the statute. It may be the fact that, from this organization and through the power of collective bargaining, the graduate nurse is in a position to protect herself from economic oppression. Indeed, the advance made of late years in the charges of graduate nurses from

$25 to $30 and $35 a week may be evidence of the power of organization. But, if a distinction of this character can be made the basis for the exception of a class, it would seem that the exception should be limited to the members of the union. The statute excepts graduate nurses, not only such of that class as belong to a protective society or as are eligible to membership in such societies. It is, however, clear that power resulting from organization, whether political or economic, cannot be a distinction justifying the exception of members of the class from laws limiting the hours of labor. If a contrary principle be established, the provision of the Constitution guaranteeing equal protection of the laws is futile.

THERE IS NO AUTHORITY FOR THE CLAIM THAT MORE THAN EIGHT HOURS' WORK A DAY, OR 48 HOURS A WEEK, IS INJURIOUS TO THE HEALTH OF WOMEN IN HOSPITALS.

Counsel for respondents quote at length from Miss Nutting's article contained in Bulletin No. 7 of the U. S. Bureau of Education. The scope and object of the article are, however, misunderstood. Miss Nutting has advocated, and does today advocate, limitation of the time of ward duty in the case of student nurses to eight hours a day. This limitation of duty is advocated not on the theory that more than eight hours' labor a day is injurious to health, but because the student must receive theoretical education in addition to the education of experience. The period devoted to attendance to lectures essential to this education is not less than three hours a week and the period of study essential to a proper preparation for lectures is equal to at least twice the lecture period.

According to the views of Miss Nutting the theoretical side of training and education is sacrificed to the practical side when the period of ward duty exceeds eight hours a day. This is because theoretical education and study essential to that education, amounting to about nine hours a week, must also be performed. We do not question the correctness of this view, dealing as it does with the question of education. Indeed, the report of Miss Nutting specifically disclaims any authority on the general subject of health of either student or graduate nurses, for on page 33 it is said:

"NEED OF VITAL STATISTICS.

"It is felt by some of those who have been identified for many years with hospitals and training schools, that there is need for carefully secured vital statistics which will supply exact information, not only as to the relative effect of two against three years of rigid hospital training, or the 8, 9, or 10 hour day, the conditions under which the students live and

> work, the number of physical and nervous breakdowns during the ordinary course of training, but which shall carry its investigations out into the nurse's professional life and work, in an attempt to discover the length of the working life of the average nurse in various professional fields of activity--private nursing, hospital work, district work, tuberculosis work especially, and other phases of work in which nurses are now engaged in numbers. It is important to have some accurate data as to the amount, for instance, of tuberculosis which develops in nurses after they leave the training schools, and at what period; and now that the idea of requiring a careful physical examination of all students is gaining favor in schools of the highest standing, as a measure of protection both to the student, hospital, and school, it should be comparatively easy to secure such vital statistics."
>
> *Bulletin No. 7, U. S. Bureau of Education,* 1912, *p.* 33.

We do not question the fact that the position of the student nurse is different from that of other women working in hospitals. But the statute under consideration deals with the student nurse as on a plane with all hospital employees except graduate nurses. We are not here attacking a statute which draws a distinction between student nurses and doctors, pharmacists, graduate and experienced nurses, and other hospital employees. *This statute places graduate nurses on one side of the line and doctors, surgeons, pharmacists, experienced nurses and student nurses and all other hospital employees on the other side of the line.* The fact that student nurses might with propriety have been treated as a special class is immaterial. Indeed it is by no means clear that the statute applies at all to student nurses. The student nurse is not in any sense an employee of the hospital, and, if the position assumed by the respondents in the court below be sound, the act does not apply to cases in which the relation of hiring does not exist. In the brief filed in this court the basis of the classifications is stated to be service in gainful occupations. Indeed this position has been as-

sumed by the department of the State government charged with the enforcement of the law, and there has, therefore, been no attempt to enforce the act against hospitals conducted by religious orders. In Matter of Miller, 162 Cal., 687, the Supreme Court of the State construed the term employed as equivalent to "engaged in service for another" (p. 695), but the court also said: "There can be no contract by the employee to serve without a corresponding contract by the employer to hire and receive such service" (693). This leaves the question of the student nurse somewhat in the air. Her position, however, seems to be paralleled by that of the members of the religious orders. However, this question is not material.

THE PROVISIONS OF THE STATUTE EXCEPTING GRADUATE NURSES CANNOT BE SUPPORTED ON ANY PRINCIPLE OF LAW IF THERE BE IN FACT NO BASIS FOR THE EXCEPTION.

Respondents seek to sustain the exception of graduate nurses, even if there be in fact no basis therefor, citing decisions which lay down the rule that a classification is not subject to attack merely because it does not embrace all the occupations which might with reason be included therein.

In the *Matter of Miller,* 162 Cal., 698, the Supreme Court of the State of California stated the rule on this subject as follows:

> "A law is general and uniform in its operation when it applies equally to all persons embraced within the class to which it is addressed, provided such class is made upon some natural, intrinsic, or constitutional distinction between the persons composing it and others not embraced in it. It is not general or uniform and it makes an improper discrimination if it confers particular privileges or imposes peculiar restrictions or disabilities upon a class of persons arbitrarily selected from a larger number of persons, all of whom stand in the same relation to the privileges granted or burdens imposed, and between whom and the persons not so favored or burdened no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privileges or burdens. The difference on which the classification is based must be such as, in some reasonable degree, will account for or justify the peculiar legislation."

In the case at bar the classification adopted includes women in hospitals and the graduate nurse, if working in a hospital falls within the classification on which the act rests. She is rescued from the operation of the act only by express exception. This is not a question of whether or not a place or an occupation should or should not be included within the classification adopted, a matter which, from a

practical point of view, necessarily rests very largely in legislative discretion. This is a question of whether or not a particular class can be favored by express exception from a classification which includes them. Such a provision cannot be justified on the theory that, though there may be no practical difference between classes regulated and those not regulated, still it was not necessary for the legislature to make the law all-embracing at once. Here the classification adopted includes graduate nurses, and some reason must be found before this exception can be justified. In this case the question is not whether the classification adopted is real, but whether the exception declared is justifiable.

Counsel for respondents also quote from the opinion in *Lindsley vs. Natural Carbonic Gas Co.*, 220 U. S., 61, 78, where it was said:

> "1. The equal-protection clause of the 14th Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.
>
> "2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality.
>
> "3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> "4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

But that opinion continues:

> "Unfortunately the allegations of the bill shed but little light upon the classification in question.

> They do not indicate that pumping from wells not penetrating the rock appreciably affects the common supply therein, or is calculated to result in injury to the rights of others, and neither do they indicate that such pumping as is done for purposes other than collecting and vending the gas apart from the waters is excessive or wasteful, or otherwise operates to impair the rights of others. In other words, for aught that appears in the bill, the classification may rest upon some substantial difference between pumping from wells penetrating the rock and pumping from those not penetrating it, and between pumping for the purpose of collecting and vending the gas apart from the waters and pumping for other purposes, and this difference may afford a reasonable basis for the classification.
>
> "In thus criticising the bill, we do not mean that its allegations are alone to be considered, for due regard also must be had for what is within the range of common knowledge and what is otherwise plainly subject to judicial notice. *Brown vs. Piper*, 91 U. S., 37, 43; *Brown vs. Spilman*, 155 U. S., 665, 670; *McLean vs. Denver & Rio Grande R. R. Co.*, 203 U. S., 38, 51; *McNichols vs. Pease*, 207 U. S., 100, 111. But we rest our criticism upon the fact that the bill is silent in respect of some matters which, although essential to the success of the present contention, are neither within the range of common knowledge nor otherwise plainly subject to judicial notice."

In the case at bar the facts are alleged, and it is directly charged that there is no just or reasonable ground for excepting graduate nurses in hospitals from the operation of the law. The appellants offered to prove all the allegations of the bill and certain specific facts considered as supporting the allegations of the bill, the offer being as follows:

> "Petitioners offered to prove that 'all the allegations of fact set forth in the bill were true; that the fact that a woman was a graduate nurse merely showed that she had completed a course of study for the treatment of the sick; but that the course of study

> which a woman must take for that purpose was not prescribed by law or fixed by custom, but was such as any hospital or training school might, in the discretion of its governing officers see fit to prescribe; that the difference between a graduate nurse and an experienced nurse is a difference of technical education only, and that there is no standard by which this difference can be measured; that graduate nurses working in, and employed by, hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers or assistants to the medical staff."
>
> Tr., Fol. 81, No. 905 or 363.

As a result, under the rule declared, the decision must be reversed unless the court can take judicial notice of facts justifying the exception, and we respectfully submit that none such exist, and that the fact that no justification exists is within the realm of judicial knowledge. Indeed the statutes of the State providing for the registration of nurses evidence and declare the existence of facts from which this conclusion follows as matter of law.

THE STATUTE UNDER CONSIDERATION IS NOT A HEALTH LAW.

In the opening brief we endeavored to point out that the statute under consideration was not a health regulation, but rather a law intended to promote the economic welfare of certain classes of women.

The respondents make no direct reply to the arguments on this branch of the case. But respondents contend that a law regulating hours of labor in hospitals and hotels may be a health law. This we concede, but, as we pointed out in our opening brief, there is no legislative declaration that the statute is a health law. The law is framed so as to limit, not the hours of labor, but the hours of employment by a particular employer. Respondents concede that this is the fact (*Respondent's Brief*, p. 41). The law does not limit the hours of employment of women engaged in domestic service

or agricultural labor or factory work connected with fruit industry. Yet, in California, the health of women engaged in these occupations is more in need of protection than that of any other class. The facts justify the court in treating the law as what it really is, an economic as distinguished from a health measure. It is true that in the *Miller* case the Supreme Court of California said:

> "We must take this statute as a law intended for a police regulation to preserve, protect or promote the general health and welfare." 162 Cal., p. 696.

It is, however, perfectly apparent from the context in which this statement is found that the court did not itself believe the statement to be in accordance with the fact; but that this language amounts to no more than the expression of the view that the court was bound to assume (regardless of fact) that the object of the law was such as to make it possible to declare the act constitutional. This court, however, is not bound by any such assumption. On the contrary, the decisions of this court declare that—

> "the object of the act must be determined from the natural and legal effect of the language employed."
> *Minnesota vs. Barker,* 133 U. S., 313.
> Cases cited in appellants' opening brief, pp. 43, 44.

Where the effect of a statute is to limit the hours of labor performed for a particular employer and nothing more, it is clear that the statute is not to be regarded as a health law.

Under these circumstances we have nothing to add to the argument contained in the opening brief, pages 62-78, where we contend that the statute cannot be supported as an exercise of police power.

IN CALIFORNIA WOMEN ARE NOT WARDS OF THE STATE, AND THE STATUTE CANNOT BE SUSTAINED ON ANY THEORY OF WARDSHIP.

We concede that physical differences existing between men and women may afford a basis for a different application of the same rule. Physical facts may make reasonable as applied to women a rule which would be unreasonable as applied to men.

It is, however, settled in California that there are no peculiar legislative powers to which women are subject, but from which men are free.

Section 18 of article XX of the Constitution of California provides that "no person can on account of sex be disqualified from entering upon or pursuing any lawful business vocation or profession."

There can therefore be no doubt that the law under consideration cannot be sustained as an exercise of the power of the State as *parens patriæ*. It must fall unless it can be justified as an exercise of police power.

Matter of Miller, 162 Cal., 687-693.

Part II.

Reply to Brief of Mr. Brandeis.

The brief of Mr. Brandies differs from the brief filed by the Attorney General in the following particulars:

a. The brief of Mr. Brandeis admits that there is no reason for excepting graduate nurses from the operation of the law not applicable with equal force to graduate physicians. (See p. 85.)

b. The brief of Mr. Brandeis claims that though Miss Nelson is a graduate and licensed pharmacist and is employed as such in the hospital, the fact that she usually acts as storekeeper for the period of four hours a day deprives her of the right to object that her hours of labor in the capacity of pharmacist, her principal employment, are restricted.

Apart from these differences the brief of Mr. Brandeis and that of the Attorney General follow, in the main, similar lines. Though Mr. Brandeis seems to base his case on extracts from private letters, letters to newspapers, and quotations from various journals published by nurses, that principally quoted being the organ of the association of graduate nurses, the people who insisted upon and obtained exemptions from the law. Had we understood that matter of this class could, with propriety, be quoted, the views of all the most eminent people in the country, competent by experience and education to express opinion on these matters, could have been laid before the court. We were, however, under the impression that in matters of this class the opinions of third persons could be of value only when taken in the form of testimony and the witness subjected to examination. Reading the extracts quoted in the brief of Mr. Brandeis has but confirmed this impression. These extracts do not in any one instance deal with the question presented in this

case. So far as we are aware Mr. Brandeis has not quoted a single opinion to the effect that a law limiting the hours of labor of women in hospitals to eight hours a day and forty-eight hours a week can be considered as proper or necessary for the protection of health, either of the women or of those cared for by the hospital. As pointed out in reply to the brief of the Attorney General, the fact that more than eight hours a day ward duty is all that can be properly performed by a student of whom other work is required, is beside the question here involved. This law cannot be supported on the theory that a student performing eight hours' ward duty gives more than a fair return for the education she receives or else must work too long a period in addition to acquire that education.

This law is a law limiting the hours of labor of all women in hospitals except graduate nurses. There is no distinction drawn between student nurses and other women. As stated in the letter of Anna A. Williamson, extracts of which are quoted by Mr. Brandeis at page 31 of his brief, the law was a measure of the labor party. That party means to carry forward to every available field the eight-hour principle. As originally proposed the law contained no exceptions, but as passed it excepted graduate nurses, the only body of women working in hospitals who were organized. As a result, no quantity of correspondence or opinion justifying the regulation of the hours of student nurses can support such a law, nor can distinctions between graduate and student nurses support the exception of graduate nurses and the subjection of graduate physicians, experienced nurses and all other women to the law. The letters written by graduate nurses and the extracts from newspapers quoted in the brief of Mr. Brandeis merely show that their authors did not understand either the scope or purpose of the law. This is not surprising, but no amount of literature of this class can be viewed as affording a basis for the statute. One and all these articles and letters assume that the law applies or was to apply only to the student nurse.

THE STATUTE LIMITS THE HOURS OF LABOR OF ALL WOMEN EMPLOYED IN HOSPITALS EXCEPT GRADUATE NURSES. IT APPLIES TO A GRADUATE PHYSICIAN, AN EXPERIENCED NURSE, A GRADUATE PHARMACIST, AND EVERY WOMAN EMPLOYED IN A HOSPITAL. ALL QUESTIONS AFFECTING THE VALIDITY OF THE STATUTE AS APPLIED TO HOSPITALS ARE PRESENTED IN THIS CASE BY THE APPEAL OF THE HOSPITAL TRUSTEES. IF FOR NO OTHER REASON, THIS RESULT FOLLOWS FROM THE PROVISIONS OF THE STATUTE IMPOSING PENALTIES ON THE EMPLOYER ALONE.

In the brief of Mr. Brandeis it is said:

> "Mr. Bowie in his brief says:
>
> "'The act limits the liberty of physicians and surgeons. No reason can be suggested which sustains a law prohibiting the graduate physician from working more than eight hours a day.'
>
> "These statements appear to be wholly unfounded. Neither in California nor in Illinois have the acts limiting the hours of labor of women employees in hospitals been applied to physicians and surgeons, for they are not considered employees."
>
> Brief of Mr. Brandeis, p. 85.

We are somewhat at a loss to understand this statement. When this case was heard before the district court the attorney for the Labor Commissioner admitted that the statute limited the hours of labor of graduate physicians and graduate surgeons when engaged in the service of the hospital. Certainly there is nothing that prevents the relation of employer and employee from subsisting between a physician and a hospital, and in California such relationship is quite common. The internes in hospitals are employees of the hospital in the strictest sense, and it is now customary for doctors administering anæsthetics to be employed by the hospital.

In the brief filed by the Attorney General it is also con-

ceded that the statute applies to physicians and surgeons when the hospital pays for their service.

Brief of Attorney General, p. 41.

To hold that a student nurse in a hospital is an employee, but that a physician hired and paid by the hospital is not, would be a strange construction of this statute.

However, the clear language of the act and the decision of the Supreme Court of California settles this question, if it be a question.

The act provides: "No female shall be employed in any hospital." In Matter of Miller, 162 Cal., 687, 695, the Supreme Court said: "The act * * * limits the time for which a female may be employed—that is to say, engaged in service for another." Can there be any doubt that a physician may be, and frequently is, engaged in service for a hospital?

The hospital trustees, plaintiffs in this case, have in the past been in the habit of employing in the Merrett Hospital women who are graduate physicians. If the statute be invalid in prohibiting such an employment for more than eight hours a day, they are entitled to an injunction; for, as said by the Supreme Court of California in the Miller case, "there can be no contract by the employee to serve without a corresponding contract by the employer to hire and receive such service. Therefore, although the act in question provides a punishment only for the employer, its prohibition applies to both, and it clearly restricts the liberty of the employer and employed in specific establishments."

Matter of Miller, 162 Cal., 687, 693.

But as no penalty is inflicted by the statute on the employee, and as the employer alone is punished, the employer alone must have the right to raise every question of constitutional law connected with the statute.

Unless the employer be permitted to present every ques-

tion of constitutional law arising in connection with the act no one else can do so; he alone is punished, and the liberty of others is restrained only through the punishment by which he is threatened. This case does not involve the single question of the employment of Miss Nelson. It involves the application of the act to hospitals in every possible phase, the hospital trustees being plaintiff. If the statute be unconstitutional in any part they are entitled to have it so declared, and every question that can arise in connection with the constitutionality of the law as applied to hospitals is before this court in this case.

Apart from this, however, it is perfectly clear that Miss Nelson, if she be permitted to be heard at all, can present her claim here, and the mere fact that she does not devote all her time to the work of pharmacy does not debar her from protecting her employment in that profession. As stated in the bill, the fact that she is a pharmacist and is employed as such, and that this is her principal occupation, renders it essential that she be allowed to serve more than eight hours a day. The bill alleges that it is the necessity of this occupation which will result in the loss of her position if the statute be enforced, and the prohibitions of the statute will prevent her from obtaining employment in other hospitals (Tr., fols. 8 and 9, No. 362).

THERE IS NO FOUNDATION FOR THE CLAIM THAT THE STATUTE MAY BE SUPPORTED AS AN EXERCISE OF POLICE POWER DESIGNED FOR PROTECTION OF HOSPITAL PATIENTS.

The claim that the statute may be upheld as an exercise of police power designed to protect the patients in hospitals as distinguished from the workers is advanced by counsel. There is, however, absolutely no support in fact for such a theory. As the hospital employees in all departments are regulated by the statute, even though such departments have no connection with the patients, it is obvious that this is not the basis of the act. Inquiry among or evidence received

from members of the medical profession will demonstrate that no such limitation is either necessary or desirable for the protection of the health of hospital patients, but is, on the contrary, distinctly injurious to them. The theory that the protection of patients requires that the hours of labor of a hospital pharmacist be limited to eight hours a day is obviously due to lack of familiarity with the actual facts. No person has less trying work than the ordinary hospital pharmacist. Though the hours of duty are unusually long the actual labor performed during the hours of duty is by no means constant. The hospital pharmacist is a living witness to the truth of the statement "they also serve who only stand and wait." The suggestion that the work of the pharmacist might be properly done by the graduate nurses unfortunately runs counter to the act regulating the practice of pharmacy. This in California is a crime. The suggestion that proprietary drugs be used does not, we fear, concur with the best medical opinion of the country.

Respectfully submitted,

J. F. BOWIE,
Attorney for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 362.

No. 363.

WILLIAM B. BOSLEY, PETER L. WHEELER, and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and ETHEL E. NELSON,

Appellants,

vs.

JOHN P. McLAUGHLIN, Labor Commissioner of the State of California, JOHN KEAN, Deputy Labor Commissioner of the State of California, and JOHN J. TOBIN, Deputy Labor Commissioner of the State of California; W. H. L. HYNES, District Attorney of Alameda County, State of California,

Appellees.

APPELLANTS' BRIEF.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Attorneys for Appellants.

JOHN F. BOWIE,

Counsel for Appellants.

INDEX.

	Page.
SUMMARY OF QUESTIONS PRESENTED ON THESE APPEALS	1–8
The Act of 1913	2
Proceedings in the District Court	2
Position of Appellants	3–8
(a) The Act is not a Health Law	3–4
(b) The Exception of Graduate Nurses in Hospitals Operates to Deny to Other Women Equal Protection of the Laws	4–8
THE RECORD	9–13
The Allegations of the Bill	9–11
The Full Text of the Act of 1913	10–11
The Answer	12
Offer of Proof	12
Judgment	13
SPECIFICATION OF ERRORS	14–16
HOSPITALS ARE NOT UNSANITARY PLACES	17
Manner in Which Hospitals are Conducted	18
Administrative Department	18
Care of the Sick	18
The Work of Nursing	19
History	19
The Experienced Nurse	20
The Student Nurse	20
System of Education	20
Health of the Student Nurse	21
Advantages of Existing System	22
The Graduate Nurse	23

ARGUMENT.

PART I.

Page.

THE PROVISION OF THE STATUTE EXCEPTING GRADUATE NURSES FROM THE OPERATION OF THE LAW RESULTS IN DENYING EQUAL PROTECTION OF THE LAWS TO ALL OTHER WOMEN WORKING IN HOSPITALS..24–36

The fact that a law may be passed in exercise of the police power does not obviate the requirement of equal protection 25

Equal protection of the laws requires that no impediment be interposed to the pursuits of one except as applied to the pursuits of others under like circumstances 26–29

Appellants offered to prove as a fact that the Statute imposed on women following the same pursuits as those followed by graduate nurses impediments not imposed on graduate nurses: that no difference existed justifying this discrimination.....30–31

The pursuits followed by graduate nurses in hospitals are the same as those followed by other women in hospitals and there is no difference in theory or past experience justifying the discrimination.....31–36

PART II.

Page.

THE STATUTE WILL IF ENFORCED OPERATE TO DEPRIVE APPELLANTS OF LIBERTY WITHOUT DUE PROCESS OF LAW.....37–84

SUMMARY OF APPELLANT'S POSITION.....37–42

THE ACT UNDER CONSIDERATION IS NOT A HEALTH LAW.. 43

Rules pursuant to which the object of the Statute must be ascertained 43–46

Considerations which demonstrate that the object of the Act is not the protection of health.....47–61

LAWS LIMITING HOURS OF LABOR OF ADULTS OPERATE TO DEPRIVE THOSE SUBJECT THERETO OF LIBERTY..... 62

Liberty includes freedom to work at a lawful calling..62–67

Women are not wards of the State.....68–70

Discussion of the views announced by Mr. Justice Holmes in Lochner v. N. Y.....70–72

THE STATUTE OPERATES TO DEPRIVE APPELLANTS OF LIBERTY WITHOUT DUE PROCESS OF LAW.....74–78

THE STATUTE IS INVALID EVEN IF VIEWED AS AN EXERCISE OF POLICE POWER AS THE RESTRICTIONS IMPOSED ARE ARBITRARY AND UNNECESSARILY OPPRESSIVE 79–84

APPENDIX.

Summary of Statutes of the States of the Union regulating the hours of labor of women.

TABLE OF CASES AND STATUTES.

CASES

Page.

Addyston Co. v. U. S., 175 U. S., 211..... 73
Allgeyer v. Louisiana, 165 U. S., 578.....62, 73
Atty. Gen. v. Sillem, 33 L. J. Ex., 92..... 35

Chicago, B. & Q. v. McGuire, 219 U. S., 549..... 39
Connolly v. Union Sewer Pipe Co., 184 U. S., 540..... 25
Cotting v. Kansas, 183 U. S., 79..... 28

Drayton, Ex parte, 153 Fed., 986..... 73
Dyke v. Elliott, L. R. 4, P. C., 184..... 35

Erie R. R. Co. v. Williams, 233 U. S., 685.....39, 40
Eubank v. Richmond, 226 U. S., 137..... 40

Galle v. New Orleans, State ex rel, 113 La., 371..... 73
German Alliance Ins. Co. v. Kansas, 233 U. S., 389.... 39
Gulf, Colorado & Santa Fe R. R. v. Ellis, 165 U. S., 150 32

Jentzsch, Ex parte, 112 Cal., 468..... 33

Lawton v. Steele, 152 U. S., 133.....74-5, 80
Lochner v. New York, 198 U. S., 45.....
.....44, 45, 62-3, 64, 65-6, 70, 71, 72, 75, 80, 82
Low v. Rees Printing Co., 41 Neb., 127.....28, 58

Minnesota v. Barber, 136 U. S., 313.....43, 44
Mugler v. Kansas, 123 U. S., 623.....44, 78
Muller v. Oregon, 208 U. S., 412.....46, 67, 75, 78, 80, 81

Page.

Opinion of Justices, 208 Mass., 622..... 82

People v. Elerding, 254 Ill., 579.....48–50
People v. Williams, 189 N. Y., 131.....69–70

Ritchie v. People, 155 Ill., 98.....58, 68–9, 82

Sing Tuck, In re, 126 Fed., 386..... 73
Smith v. Alabama, 124 U. S., 465..... 79
Smith v. Texas, 233 U. S., 630.....29, 32, 62, 72, 79, 80
Soon Hing v. Crowley, 113 U. S., 703..... 43
State ex Rel. Galle v. New Orleans, 113 La., 371..... 73

U. S. v. Ragsdale, Hempst. 479..... 35
U. S. v. Wiltberger, 5 Wheaton, 76..... 35

STATUTES.

Statutes of California, 1913, p. 713.....Page 10–11
Statutes of Other States of the Union, see Appendix.

In the Supreme Court

OF THE

UNITED STATES.

WILLIAM B. BOSLEY, PETER L. WHEELER and SAMUEL H. BUTEAU, Trustees of "The Samuel Merritt Hospital," and ETHEL E. NELSON,

Appellants,

vs.

JOHN P. McLAUGHLIN, Labor Commissioner of the State of California, JOHN KEAN, Deputy Labor Commissioner of the State of California, and JOHN J. TOBIN, Deputy Labor Commissioner of the State of California, W. H. L. HYNES, District Attorney of Alameda County, State of California,

Appellees.

Numbers 362 and 363 October Term 1914.

SUMMARY OF QUESTIONS PRESENTED ON THESE APPEALS.

These appeals involve the validity of certain provisions of the Statute known as the California Eight

Hour Law for Women. Number 362 is an appeal from an order refusing a preliminary injunction, the application for which was heard on the bill alone. Number 363 is an appeal from the final judgment dismissing the bill.

The Act of 1913.

The act in question as amended in 1913 provides that no woman shall be employed by the same employer more than eight hours a day, or forty-eight hours a week, in any mercantile establishment, factory, *hotel, hospital* or apartment house, and certain other designated places. The Statute also prohibits the employment of women *by* express or transportation companies for a longer period of time than that mentioned.

Two exceptions are, however, provided for by the law, these being:

(1) Women engaged in harvesting, canning, curing or drying perishable fruit or vegetables;

(2) Graduate nurses in hospitals.

The prohibition of the Statute is absolute. No allowance is made for the emergencies of life.

Proceeding in the District Court.

This action was commenced by the Trustees of the Samuel Merritt Hospital and Ethel Nelson, a graduate pharmacist employed in that hospital, to enjoin certain State officers specially charged with the enforcement of the law from taking proceeding against them. The defendants made no motion to dismiss

but filed their answer. On the case being called for hearing, the Court refused to allow evidence to be introduced, and dismissed the bill on its own motion, after expressing the view that the Statute was an exercise of police power, intended for the protection of health, and stating that the Court was not satisfied that the act was so utterly unreasonable and extravagant as to justify a decision declaring it invalid in any part.

Position of Appellants.

The Appellants respectfully contend that the law under consideration is not an exercise of police power, designed for the protection of public health.

(a) The Act is not a health law.

There is no word either in the Statute or in the title giving color to the assumption that the law is a health law, while the body of the act, the classification on which it rests, the exceptions specified, the imposition of penalties upon the employer alone, the fact that the Statute was intentionally framed so that women may work as many hours a day as they please, provided that not more than eight hours of labor be performed for the same employer, and the condition of the laws of civilized nations at the time the statute was enacted, all show that the object of the law was the amelioration of the conditions under which the labor of women is performed, without particular regard to health.

The truth is that though it might be argued that some of the provisions of the act could, standing alone, be regarded as intended for the protection of health, this is by no means true of the act as a whole.

Viewed in its entirety, the statute embodies the idea that "eight hours is a fair day's work."

Indeed, it has been remarked by the Department of Labor "that the shortness of the working day is proportionate to the development of the organization of the working people." [1] And as stated by Rea (Eight Hours for Work):

> "In the matter of hours for labor it is possible to say that the question is not one between benefit and hurt, but merely the preference of one section of the people to one form of benefit and the preference of another section to another form of benefit." [2]

The primary question fairly presented by this appeal is whether the desire of part of the people for an eight hour day may be achieved by a law restricting to that end the liberty of all the people.

Appellants contend that such a law is not a legitimate exercise of legislative power, but if it be held otherwise or if it be determined that the act is to be regarded as a health measure, a question of even greater importance arises.

(b) If the Act be regarded as a health law, it is nevertheless invalid.

Assuming for the purpose of discussion that the Statute is to be viewed as a health measure and that regarded in the light of this purpose it is in a general sense valid, appellants contend that the provisions of the Statute applicable to hospitals are invalid. So far as hospitals are concerned the act limits the liberty of physicians, surgeons, pharma-

Equal protection of the laws is denied to all hospital employees except graduate nurses.

[1] Bulletin No. 118, U. S. Dept. of Labor, Bureau of Labor Statistics.

[2] "Eight Hours for Work," John Rae, Macmillan & Co., p. 320.

cists, *experienced* nurses and all other women working therein except *graduate* nurses.

Equal protection of the laws is denied to all hospital employees except graduate nurses (Continued.)

Appellants offered to prove that as matter of fact there was no reason for this exception. No reason has been shown by actual experience and there is no difference in function, physique, occupation or education between graduate *nurses* and other women working in hospitals on which the distinction may be rested. The fact is that the work of a graduate nurse in a hospital is usually of the same character as that performed by other women therein, and the graduate nurse differs from the other workers only in that she has finished a course of study for the care of the sick, which may be more or less complete than that of other hospital employees. Under existing conditions this course of study is neither prescribed by law nor fixed by custom, and is merely that which any hospital or training school may see fit to prescribe.

Conceding freely the power of the State to classify with reference to the evil to be prevented, and admitting that if the class discriminated against is or reasonably may be considered to define those from whom the evil mainly is to be feared, that class may properly be picked out; admitting that abstract symmetry is immaterial and that classification may be based on experience, still no reason can be suggested from actual experience, or otherwise, which sustains a law prohibiting the graduate physician, the grad-

Equal protection of the laws is denied to all hospital employees except graduate nurses. (Continued.)

uate pharmacist, the experienced nurse, and others from working more than eight hours a day, but according that right to a graduate nurse.

If the object of the law be the preservation of health, the classification is arbitrary and operates as a denial of equal protection of the laws.

A fair view of the object of the Act affords a rational explanation for the exceptions. The Statute under consideration expresses the economic ideas of a class, but as this class was unable to establish the condition for which it contended through the operation of economic force, its members were compelled to resort to political power. It has been said "Law is a condition of politics rather than its end," and the truth of this statement appears in the Statute. The Act prohibits the employment of women more than forty-eight hours a week or eight hours a day in certain specified places. But the condition of politics was such that no law of this kind could be passed against the will of the agricultural interests; accordingly the Court will note the significant fact that women engaged in agricultural labor are not included in the act and that the Statute excepts from its operation women employed in harvesting, canning, curing or drying perishable fruit or vegetables. This was a concession to the agricultural interests. Such is the truth even if there be in fact a distinction upon which the Court must support the classification.

Equal protection of the laws is denied to all hospital employees except graduate nurses. (Continued.)

In 1913 when hospitals were added to the list of places proscribed, an additional exception was inserted in the Act—"graduate nurses in hospitals." Of the various classes of persons usually employed in hospitals, graduate nurses alone are organized. Physicians, pharmacists, experienced nurses and others not possessing this marked advantage were subjected to the law, but the economic advantage arising from being excepted was apparent to graduate nurses, who insisted upon and obtained exemption.[1] But the exception was so limited as to include only "graduate" nurses,—that is, women who have completed in some training school for nurses courses of study in the occupation of nursing the sick, and have become graduates of that school,—experienced nurses, physicians and pharmacists are subject to the law.

So this question arises: Can the Legislature confer on graduate nurses alone the economic advantages arising from the exception and at the same time limit the freedom of contract of experienced nurses, physicians, pharmacists and other women? We submit that this cannot be done.

It may seem that the exception is small, and in a way trivial, but the vital importance of the principle on which it rests is apparent, and it seems that

[1] The fact that certain classes of labor object to being included in laws limiting the hours of labor is not unusual. See Webb "Industrial Democracy," Longmans, Green & Co. Ed., 1902, p. 342, *et seq.*

the pressure of competition is such that organizations will be quick to seize and demand special favors.

Indeed, in cases in which liberty may be limited by law, the importance of requiring the strictest observance of the Constitutional provisions relating to equal protection of the laws is manifest. Very few cases have arisen relating to exceptions to statutes based on a classification and dependent upon that classification for their validity, but one thing is clear, and that is the exception must be framed on some reason other than the political power of the class excepted.

As there cannot be the least doubt that further advances in organization of the working class will result in even more drastic regulation than that existing or proposed, the importance of this question is evident. If, as appellants contend, this act violates the provisions of the Federal Constitution, it is best that this fact be decided at once. To sustain such laws on a false basis merely permits the movement from which they spring to gather an almost irresistible impetus.

The Allegation of the Bill.

Messrs. Bosley, Wheeler and Buteau hold certain property in trust "to found and maintain a hospital "and to treat therein free of all charge as many "poor persons suffering from injury or afflicted with "curable non-contagious disease as the income from "the fund will permit." As Trustees of this trust they had founded and were maintaining The Samuel Merritt Hospital, which contains forty beds for the free treatment of the sick and an equal number of beds for paying patients.

In the conduct and operation of this hospital there are employed eighty women and eighteen men. Among the women so employed is Ethel Nelson, one of the Appellants, her principal occupation being that of hospital pharmacist. Miss Nelson is a graduate of the Department of Pharmacy of the University of California, and licensed to carry on that occupation in California. The exigencies of her occupation are such that on some occasions she is required to work in the hospital more than forty-eight hours in a week, and sometimes more than eight hours in a day.[1] The Trustees of the hospital desire to retain Miss Nelson as a hospital employee, but considerations of economy and efficiency make this impossible if the Trustees become subject to fine

[1] There is a statute in California limiting the hours of labor of pharmacists to ten hours a day and sixty hours a week. This is obviously a proper exercise of the police power and the validity of the act is not in any way questioned. Stat. Cal., 1905, p. 28.

and imprisonment whenever the exigencies of her occupation as pharmacist render it necessary for her to work in a hospital more than forty-eight hours a week, or more than eight hours a day.

The Act.

The complaint sets forth the full text of the act, which is as follows:

"Section 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, hospital, place of amusement, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this State more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; *provided, however,* that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning, or drying of any variety of perishable fruit or vegetable, nor to graduate nurses in hospitals.

Sec. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment, employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

Sec. 3. The bureau of labor statistics shall enforce the provisions of this act. The commissioner, his deputies and agents, shall have all powers and authority of sheriffs or other peace officers, to make arrests for violations of the provisions of this act, and to serve all processes and notices thereunder throughout the State.

Sec. 4. Any employer who shall permit or require any female to work in any of the places mentioned in section one more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse

to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for a first offense, by a fine of not less than twenty-five dollars nor more than fifty dollars; for a second offense, by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars; or by imprisonment for not more than sixty days, or by both such fine and imprisonment. All fines imposed and collected under the provisions of this act shall be paid into the State treasury and credited to the contingent fund of the bureau of labor statistics."

Statutes of California, 1913, p. 713.

The bill then sets forth in some detail the manner in which the Merritt Hospital is conducted, alleging that the value of the rights for the protection of which the action is brought, and the extent of damage which the complainants will each suffer, exceeds the sum of Three Thousand ($3,000.00) Dollars. While such a showing is, we believe, proper in support of the allegation of damage, complainants do not contend that the validity of the Statute is to be measured by facts peculiar to the Merritt Hospital. The bill, however, alleges that there is no just or reasonable ground for excepting graduate nurses from the operation of the Statute; that hospitals are not unhealthful or unsanitary places, but on the contrary the health of people working in hospitals is better safeguarded than that of people working in other places, and that a properly conducted hospital for the treatment of injuries and non-contagious dis-

ease is one of the most sanitary places in which labor is performed.

The Answer.

The defendants' answer traversed the allegations of the bill as to the extent of damage suffered by the plaintiffs, and the allegations that the Act of June 12, 1913, violated the provisions of the Fourteenth Amendment in the particulars alleged.

No motion to dismiss was made by the defendants. The cause was set down for hearing, and the judgment and minutes of the Court show in concise form the subsequent proceedings.

Order Dismissing Bill in Equity of Petitioners and Plaintiffs, and Rejecting Offer of Testimony by Plaintiffs.

Offer of Proof.

"This cause having come on regularly for trial this 5th day of January, 1914, petitioners appearing therein by their attorneys, and defendants also appearing by their attorneys. Petitioners offered to prove that 'all the allegations of fact set forth in the bill were true; that the fact that a woman was a graduate nurse merely showed that she had completed a course of study for the treatment of the sick; but that the course of study which a woman must take for that purpose was not prescribed by law or fixed by custom, but was such as any hospital or training school might, in the discretion of its governing officers see fit to prescribe; that the difference between a graduate nurse and an experienced nurse is a difference of technical education only, and that there is no standard by which this difference can be measured; that graduate nurses working in, and employed by, hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers or assistants to the medical staff.

The Court thereupon stated that at the prior hearing on the motion for an interlocutory injunction in this case, the Court had held that the complaint did not state a cause of action, and that the Court considered it unnecessary to devote time to the hearing of evidence.

Thereupon it was ordered that the offer of petitioners to introduce evidence in support of the allegations of the bill be, and the same is, denied. It was further ordered that the bill of complaint be dismissed, and a decree be signed, filed and entered accordingly, to which said orders petitioners were allowed exceptions" (Tr., fol. 31, No. 905 or 363).

Thereafter the following judgment was made and entered: Judgment.

"This cause having come on regularly for trial this 5th day of January, 1914, and the Court having denied to petitioners the right to introduce evidence offered in support of the bill, and having ordered that the case be dismissed;

"Now, therefore, it is ordered, adjudged and decreed that the petitioners take nothing by their action, and that the bill of complaint be and is hereby dismissed with costs to defendants.

"William C. Van Fleet, Judge."

(Tr., fol. 33, No. 905 or 363.)

SPECIFICATION OF ERRORS.

Appeal Number 363.

The Court erred in dismissing the bill in equity.

The judgment dismissing the bill in equity, seeking to enjoin the enforcement of the Act of the Legislature of the State of California, approved June 12, 1913, and fully set forth in said bill, is erroneous for each of the following reasons:

(1) The said act of the Legislature if put into execution will deprive the appellants of liberty guaranteed to them by the 14th amendment to the Constitution of the United States.

(2) The said act of the Legislature if enforced will deny to the appellants, and to each of them, the equal protection of the laws guaranteed by the 14th amendment to the Constitution of the United States, and

(3) The provisions of the Statute excepting graduate nurses in hospitals from the operation of the law and at the same time restricting the hours of labor of all other women working in hospitals, operates to deny to all women working in hospitals other than graduate nurses equal protection of the laws. There is no basis in fact or theory on which this exception may be supported.

The Court erred in rejecting the offer of the appellants to prove that all the allegations of fact set

forth in the bill were true; that the fact that a woman was a graduate nurse merely showed that she had completed a course of study for the treatment of the sick, but that the course of study which a woman must take for that purpose was not prescribed by law or fixed by custom, but was such as any hospital or training school might, in the discretion of its governing officers, see fit to prescribe; that the difference between a graduate nurse and an experienced nurse is a difference of technical education only, and there is no standard by which this difference can be measured; that graduate nurses working in and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers or assistants to the medical staff.

Appeal Number 362.

The Court erred in denying the application of the appellants for an interlocutory injunction, as prayed for in the bill.

The order denying the application for said interlocutory injunction, enjoining the enforcement of the Act of the Legislature of the State of California, approved June 12th, 1913, and fully set forth in the bill is erroneous because:

(a) The said act deprived the appellants of liberty guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

(b) The said act denies to the appellants and to each of them the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The lower Court obviously entertained the view that all facts involved in determining the question of the constitutionality of a law, lie within the realm of judicial notice. If this view be incorrect the decision of the lower Court refusing to allow proof of the allegations of the bill was erroneous. Proceeding, however, on the assumption on which the lower Court acted, this Court will doubtless take judicial notice of the fact that most hospitals are not unhealthy places. On the contrary, hospitals are usually maintained in a highly sanitary condition and the great majority of hospitals do not treat persons suffering from contagious disease.

Hospitals are not unhealthy places.

A properly conducted hospital for the treatment of injuries and non-contagious disease is as healthful and sanitary a place as any in which labor is customarily performed, and the health of people working in hospitals is usually better safeguarded than that of people working elsewhere. The legislation here in question cannot, therefore, be supported on the theory that the place in which the work is done is peculiarly injurious to health; the conditions surrounding the performance of work in hospitals are not similar to those existing in mines and smelters. Indeed, it was not contended in the lower court that the legislation in question was justified by the conditions existing in the places in which the work was

carried on, but by the character of work customarily performed in the places described.

Occupations carried on in hospitals are not injurious to health.

The character of work done by women in hospitals is a matter of common knowledge. The large modern hospital is usually divided into departments, and the method of administration adopted in the Samuel Merritt Hospital, and set forth in the bill, is typical. In these hospitals, a certain number of women work in the office or administrative department, their occupations being those of bookkeepers, stenographers, etc. Their work may be described as office work, and does not differ from work of the same character done in other places. The housekeeping department, which is usually directed by a housekeeper or matron, includes the domestic servants, cooks, etc. In this department there is nothing peculiar about the work arising from the fact that it is performed in a hospital.

Administrative department.

The care of the sick.

The work of caring for the sick is performed by the medical staff and, under their supervision and direction, by women who are generally described as nurses. The medical staff of a hospital frequently includes women among its members, and much of the scientific work done in hospitals, such as the preparation of drugs, the administration of anesthetics, and the making of chemical and pathological analyses, is done by women. Women engaged in the practice of medicine seek and obtain employment

by hospitals, and such employment is practically essential to their professional success.

The work of nursing. The work of nursing has always been considered as lying peculiarly within the province of women, and though their entry into the field of scientific work is a matter of modern development, the work of nursing has been performed by them for many centuries.

History of Nursing. In former times hospitals were usually conducted by religious societies, and the work of nursing done by women who had taken Holy Orders. This custom still exists, and every large city in the world contains one or more hospitals so conducted. The women who perform the work of nursing in these hospitals are not graduate nurses: they are usually members of the order by which the hospital is maintained.

About the time of the Crimean War, Florence Nightingale advocated founding schools for the training or instruction of women engaged in nursing. The first training school organized in this country was at New Haven. The Bellevue Hospital of New York was the first to begin the actual work. These examples were followed somewhat slowly by the medical profession, but the idea was quite generally adopted in the closing decade of the last century. Indeed, the advances in the art of surgery were such as to require that the people in whose charge the patient remained after the operation was

performed, be instructed in some rudimentary principles of surgical art. At the present time there are three kinds of nurses: the experienced nurse, the graduate nurse, and the student nurse. Probably the greatest number of women engaged in the occupation of nursing the sick are experienced nurses, that is, women who have chosen that occupation as a vocation in life, but have not completed a course of study at any school in which the art of nursing is taught. In hospitals caring especially for people suffering from insanity or nervous diseases, graduate nurses are rarely, if ever, employed to nurse the sick. In such hospitals, and throughout the country in general, the major part of the work of caring for the sick is done by experienced nurses.

Experienced nurses.

Many of the large hospitals which are not controlled by religious societies conduct schools for the training of nurses. In these schools women receive some rudimentary medical education intended to fit them to care for the sick. Such education is designed primarily to fit the student to meet the emergencies that arise in nursing the sick during the absence of the attending physician or surgeon, and to carry out the instructions of the physician or surgeon in charge of the patient. The primary factor in the education of a nurse is experience, which can best be acquired in a hospital. The work of the students which is essential to the education and training of nurses is, however, of value to the hospital in which

Student nurses.

System of training now in use.

they study, and the fact that in hospitals some members of the medical staff and several trained nurses are always within call, gives the work of the student nurse in that place a value it would not otherwise possess. The result is that where training schools are conducted by hospitals, most of the work of nursing is done by the students therein. As the hospital benefits from the work of the students, it is customary for it to train these women free of charge, and to furnish them with board, lodging and laundry. In some hospitals, such as the Samuel Merritt Hospital, a small monthly salary, varying from Ten Dollars to Twelve Dollars and Fifty Cents, is paid in addition. The custom of paying compensation is not universal.

The health of student nurses.

The life led by student nurses in a well conducted hospital is not less healthful than the life led by other women. Prescribed rules usually compel them to observe a general routine in their mode and habit of living, and ample rest, and usually regular hours of arising and retiring are among the rules which are enforced as strictly as the exigencies of the occupation permit. In well conducted hospitals the health of student nurses is constantly preserved under the routine there established, and in such hospitals the health of these women generally improves after they have entered the institution. The percentage of illness among hospital employees is less than that ordinarily incident to almost any other employ-

ment, and is considerably less than that of women who are not engaged in working for a livelihood. The work of nursing, however, is such that the hours of labor in any one day cannot be definitely measured or limited, for the condition of the patient on whom the nurse attends may be influenced by a change of attendants if this change takes place at a critical period of illness. The fact is that the service of nursing is such that the hours of labor must be more or less determined by the condition of the patient. The efficient protection of public health requires that such latitude be allowed in the matter of hours of labor of women engaged in this work as may be compatible with the preservation of the health of the women themselves.

Advantages of existing system.

There is a marked economic advantage incident to the employment of student nurses in hospitals. The work of the student essential to education is performed under conditions which render it of value to the hospital, and for the service essential to education the student receives the desired education as partial compensation. This enables the hospital to extend the benefits arising from the education, and also the field of charitable work, beyond limits otherwise attainable.

The fact that women working for gain are at a disadvantage in competing with women performing similar labor for the benefit of the education and experience which they derive from it is obvious,

and this disadvantage is increased when the environment in which the work is performed tends to minimize the advantage of the more highly trained worker. The natural result of these conditions is that in hospitals the principal part of the work of nursing is done by the student nurse; the graduate nurse is usually employed in the operating room in the capacity of an assistant to the surgical staff. In the hospital wards the graduate nurse acts as a superintendent or director of the work of the nurses. But most hospitals conduct departments for the treatment of the rich as well as the poor, and as the wealthier classes frequently demand the services of a graduate nurse, the hospitals do employ graduate nurses to care for members of the wealthier class willing to pay the increased charge incident to such service, a charge varying from twenty-five dollars to thirty-five dollars a week for nursing alone. In other words the work customarily done by graduate nurses in hospitals is not peculiar to them. Work of the same kind is done by other women.

Graduate Nurses.

ARGUMENT.

The provisions of the Statute excepting "graduate nurses in hospitals" from the restrictions imposed give rise to a question peculiar to this appeal, which was neither presented to nor passed upon by the Supreme Court of California in the Miller case.

If the opinion of that Court in the Miller case be adopted, it by no means follows that the provisions of the Statute of 1913 dealing with hospitals are valid. As this question is peculiar to the case at bar, we have divided the Argument into two parts, the first of which deals with the question peculiar to this appeal; the second deals with questions common to both this case and the Miller case.

PART I.

THE PROVISION OF THE STATUTE EXCEPTING GRADUATE NURSES FROM THE OPERATION OF THE LAW RESULTS IN DENYING EQUAL PROTECTION OF THE LAWS TO ALL OTHER WOMEN WORKING IN HOSPITALS.

Before taking up the question of fact on which the determination of this branch of the case depends, we have endeavored to set forth the rules of law governing the question in the language in which they have been declared by the decisions of this Court.

Statutes passed in exercise of Police Power must not operate to deny equal protection of the Laws.

It is of course well settled that the mere fact that a statute is enacted on exercise of the police power does not relieve it from objection on the ground that it operates to deny equal protection of the laws.

Connolly v. Pipe Co.

In *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540, 558, this Court said:

> "The question of constitutional law to which we have referred cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this Court, were not included in the grants of power to the General Government, and therefore were reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the

Connolly v. Pipe Co. (continued).

declaration that the Constitution is the supreme law.' The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. *Gibbons* v. *Ogden*, 9 Wheat. 1, 210; *Sinnot* v. *Davenport*, 22 How., 227, 243; *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S., 613, 626."

In that case the Court declared the rules of law governing questions of this class, saying:

Equal Protection of the laws requires that no impediments be interposed to the pursuits of one except as applied to the same pursuits by others.

"The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; *that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition*, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses" (p. 559).

"The difficulty is not met by saying that, generally speaking, the State when enacting laws may, in its discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this Court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. . . . But arbitrary selection can never

Connolly v. Pipe Co. (continued)

be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. . . . No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. . . . It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' *Gulf, Colorado and Santa Fe Railway* v. *Ellis*, 165 U. S., 150, 155, 159, 160, 165. These principles were recognized and applied in *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S., 79, in which it was unanimously agreed that a statute of Kansas regulating the charges of a particular stock yards company in the State, but which exempted certain stock yards from its operation, was repugnant to the Fourteenth Amendment in that it denied to that company the equal protection of the laws" (pp. 560, 561).

The mere fact of classification is not sufficient to relieve a statute from the requirement of the equality clause.

"A State may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States. But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. *In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade to do the same things with impunity.* It is one thing to exert the power of taxation so as to meet the expenses of government, and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the State, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of

the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates" (pp. 562, 563).

Mr. Justice McKenna did not concur in the decision of the case, but the view which he expressed concerning the principles of law governing the matter did not differ in principle from those set forth in the main opinion. He said:

Connolly v. Pipe Co. Opinion of Mr. Justice McKenna.

"The equality of operation which the Constitution requires in State legislation cannot be construed, as we have seen, as demanding an absolute universality of operation, having no regard to the different capabilities, conditions, and relations of men. Classification, therefore, is necessary, but what are its limits? They are not easily defined, but the purview of the legislation should be regarded. *'A line must not be drawn which includes arbitrarily some persons who do and some persons who do not stand in the same relation to the purpose of the legislation'*" (p. 570).

Cotting v. Kansas.

In *Cotting* v. *Kansas,* 183 U. S., 79, 112, this Court said:

"Equal protection of the law is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

Low v. Printing Co.

The applicability to labor laws of the rule laid down in the Connolly case is pointed out in *Low* v. *Rees Printing Co.,* 59 N. W., 362, wherein it was held that a law limiting the hours of employment of all classes of persons, except those engaged in farm or domestic labor, was invalid, because it

operated to deny the equal protection of the laws guaranteed by the Constitution.

In *Smith* v. *Texas,* 233 U. S., 630, the Court said: Smith v. Texas.

> "Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling" (p. 636).
>
> "So the case distinctly raises the question as to whether a statute, in permitting certain competent men to serve, can lay down a test which absolutely prohibits other competent men from entering the same private employment. It would seem that to ask the question is to answer it—and the answer in no way denies the right of the State to require examinations to test the fitness and capacity of brakemen, firemen, engineers and conductors to enter upon a service fraught with so much of risk to themselves and to the public. But all men are entitled to the equal protection of the law in their right to work for the support of themselves and families. A statute which permits the brakeman to act—because he is presumptively competent—and prohibits the employment of engineers and all others who can affirmatively prove that they are likewise competent, is not confined to securing the public safety but denies to many the liberty of contract granted to brakemen and operates to establish rules of promotion in a private employment.
>
> "If brakemen only are allowed the right of appointment to the position of conductors, then a privilege is given to them which is denied all other citizens of the United States" (p. 641).

In *Smith* v. *Texas* the Court did not treat the questions of fact upon which the decision rested as lying within the realm of judicial knowledge but

took evidence to determine the questions of fact on which the constitutionality of the law depended.

If the procedure apparently sanctioned by this decision be correct the judgment in the case at bar must be reversed.

But apart from this if the rules of law declared by this Court be followed, the Statute under consideration cannot be sustained, for there is no basis in fact or theory on which the exception to graduate nurses can be justified.

Appellants offer to prove as matter of fact that equal protection is denied.

The act does not limit the work of all women in hospitals as it does in the case of hotels and apartment houses, but it expressly declares that "graduate nurses in hospitals" are excepted from the operation of the act. Appellants alleged that this exception operated to deny to them the equal protection of the laws and offered to prove that "all the allegations of "fact set forth in the bill were true; that the fact "that a woman was a graduate nurse merely showed "that she had completed a course of study for the "treatment of the sick, but that the course of study "which a woman must take for that purpose was "not prescribed by law or fixed by custom, but was "such as any hospital or training school might, in "the discretion of its governing officers see fit to pre-"scribe; that the difference between a graduate "nurse and an experienced nurse is a difference of "technical education only, and that there is no "standard by which this difference can be meas-

"ured; that graduate nurses working in and em-
"ployed by hospitals do not ordinarily perform
"therein the work of nursing the sick, but act as
"overseers to assistants to the medical staff" (Tr., fol. 31).

The Court, however, refused to hear any evidence on this subject. The following question is therefore presented: Are there any facts or conditions within the realm of judicial knowledge justifying the exception of graduate nurses from a law forbidding all other women the right to work more than eight hours a day in hospitals? If no such are at present known, then the Statute discriminates against all other women by granting to graduate nurses liberty and denying equal freedom to others.

There is no basis in fact or theory for the classification adopted.

Consultation with and inquiry addressed to those most familiar with the conduct of hospitals has disclosed no reason on which this classification can be rested, nor does common sense or past experience afford any ground therefor.

A graduate nurse is a woman who has completed a course of study for the treatment of the sick. But the course of study pursued is neither prescribed by law nor fixed by custom and is merely such as the hospital or training school giving the same may see fit to prescribe. The length of time required as a prerequisite to graduation varies from one to three years. Indeed, correspondence schools for training of nurses are now carried on, and it seems that the

There is no basis in fact or theory for the classification adopted. (Continued.)

graduate of any school for the training of nurses is a *graduate nurse.*

The sole difference between a graduate nurse and any other woman is a difference of education and of the extent of that difference there is no measure. Other women habitually working in hospitals and performing work of the same character as that done by graduate nurses are more highly educated than the graduate nurse.

This vague educational qualification certainly can not be made the basis for the exception of graduate nurses, for the law applies to graduate physicians, graduate surgeons and women of high scientific training, such as Ethel Nelson. Women whose education includes all that that of a graduate nurse includes and much more are not excepted from the act. Even if education could be adopted as a basis of classification in or exemption from laws limiting the hours of labor, it is clear that no fair educational qualification has been adopted.

Smith v. *Texas,* 233 U. S., 630.

But it is respectfully submitted that an educational qualification cannot of itself be made the basis of exemption from the operation of laws limiting the hours of labor.

Gulf v. Ellis.

As said by this Court in *Gulf, Colorado & Santa Fe R. R.* v. *Ellis,* 165 U. S., 150, 155:

> "The State may not say that all white men shall be subjected to the payment of the attorney's fees of parties

Gulf v. Ellis. (Continued.)

successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

"Classification for legislative purposes must have some reasonable basis upon which to stand. *It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations.* Thus the legislature may fix the age at which persons shall be deemed competent to contract for themselves, but no one will claim that competency to contract can be made to depend upon stature or color of the hair. Such a classification for such a purpose would be arbitrary and a piece of legislative despotism, and therefore not the law of the land" (p. 155).

Education does not of itself afford a basis of classification, nor does the mere fact of occupation in itself afford a ground of classification.

Ex parte Jentzsch.

In *Ex Parte Jentzsch,* 112 Cal., 468, 474, the Supreme Court of California declared void a law prohibiting barbers from working on Sunday after the hour of noon, for the reason that the prohibition did not apply to any other class of persons. The Court said:

"In brief, whether or not a general law to promote rest from labor in all business vocations may be upheld as within the due exercise of the police power as imposing for its welfare a needed period of repose upon the whole community, a law such as this certainly cannot. A law is not always general because it operates upon all within a class. There must be back of that a substantial reason

Ex parte Jentzsch. (Continued).

why it is made to operate only upon a class, and not generally upon all. As was said in *Pasadena* v. *Stimson*, 91 Cal., 238: 'The conclusion is that, although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions in the exercse of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.' And in *Darcy* v. *Mayor, etc., of San Jose*, 104 Cal., 642: 'The classification, however, must be founded upon differences which are either defined by the constitution or natural, and which will suggest a reason which might rationally be held to justify the diversity of legislation.'"

"In a law such as this, no reason has been or can be shown why the followers of one useful and unobjectionable employment should be debarred from the right to labor upon certain days, and others in like classes of employment be not so debarred. If it be constitutional to single out one such class and deny its members the right to labor on one day in the week, it would be constitutional to prohibit them from following their vocation upon six days of the week. When any one such class is singled out and put under the criminal ban of a law such as this, the law not only is special, unjust, and unreasonable in its operation, but it works an invasion of individual liberty, the liberty of free labor which it pretends to protect" (p. 475).

We admit that if the occupation be in itself dangerous or unhealthy, or if the incidents surrounding the work are unusual, these facts may afford a basis for classification, but such is not true in the case under consideration.

rbitrary haracter the ex- ption.

There is not any difference between the functions ordinarily performed by graduate nurses in hospitals and those performed by other women on which this classification may be placed. The Statute itself

Arbitrary character of the exception. (Continued.)

does not limit the scope of the exception to graduate nurses while engaged in the work of nursing or the performance of any particular function, and as the act is a criminal statute it does not seem possible to limit by construction the scope of the express exception. In other words, if Miss Nelson were a graduate nurse, she could pursue the calling in which she is now engaged and work as many hours as she desired. A graduate nurse is excepted from the operation of the Statute and, as the Legislature has not limited the exception to graduate nurses while engaged in performing the functions ordinarily performed by them, the Court cannot limit the exception and thus by construction make criminal an act which the language of the Statute declares not criminal. *U. S.* v. *Ragsdale,* Hempst., 479. In the case of a criminal statute the offense charged must come within the *letter* of the law. *Atty. Gen.* v. *Sillem,* 33 L. J. Ex., 92, 110; *Dyke* v. *Elliot,* L. R. 4, P. C., 184, 191; *U. S.* v. *Wiltberger,* 5 Wheaton, 96. But assuming that this is not true and that graduate nurses are excepted from the operation of the Statute only while engaged in performing duties customarily performed by them, still in fact there is no basis for the exception. As already stated, the work of a graduate nurse is either that of assistant to the surgeon or that of supervisor of wards, or that of nursing. Work of the same general character is customarily performed by other

Arbitrary character of the exception. (Continued.)

women. Why should the assistant to the surgeon if a graduate nurse be excepted from the law, but the surgeon or any other assistant subjected thereto? Why should the graduate nurse be excepted from the law but the experienced nurse subjected to it? The work that they perform is the same. Take also the case of the pupil nurse,—the work she performs is the same as that performed by some graduate nurses. She, it is true, works for her own education rather than for pecuniary compensation, but does this afford a ground for restricting her liberty? True, she may not be in the position of economic independence of the graduate nurse, but does this afford a reason for placing further burdens and restrictions upon her?

We respectfully submit that no reason can be found either in past experience or in legal theory which justifies this exception.

PART II.

THE STATUTE UNDER CONSIDERATION WILL, IF ENFORCED, OPERATE TO DEPRIVE THE APPELLANTS OF LIBERTY WITHOUT DUE PROCESS OF LAW.

SUMMARY OF APPELLANTS' POSITION.

The principles of law governing the disposition of this branch of the case are well settled.

We concede at the outset that if the Statute under consideration be a health law and the restrictions imposed are not arbitrary or unnecessarily oppressive, the act is valid.

We contend however:

(a) The statute was designed to promote the social or economic welfare of certain classes of the people; it was not enacted for the protection of health.

(b) The statute operates to deprive those on whom it operates of that liberty which the Fourteenth Amendment was designed to protect.

(c) The statute deprives those on whom it operates of liberty without due process of law.

It will doubtless be claimed that a statute designed to promote economic welfare is just as much an exercise of police power as a statute designed to promote public health, and that due process of law requires no more in one case than in the other. This

position is, we believe, based on a misunderstanding of the term police power. We submit that in cases in which it is asserted that a person is deprived of liberty in violation of the Constitution, two questions are presented:

(1) Does the act complained of in truth operate to deprive the individual of liberty? This is a judicial question involving the interpretation of the term "deprived of liberty." If this question be answered in the affirmative there is then presented the question:

(2) Has the deprivation of liberty complained of been effected without due process of law? This is also a judicial question.

Police power or general governmental power as an element in the interpretation of the 14th Amendment.

In determining what constitutes a deprivation of liberty within the meaning of the Fourteenth Amendment, it is of course necessary to construe that Amendment in the light of the Constitution as a whole, for it was not intended by that enactment to destroy or unnecessarily limit the reserve power of government, a power frequently termed police power. Accordingly, when it is claimed that a deprivation of liberty has resulted from a statute which repudiates in its entirety certain common law theories formerly accepted by our people and in execution of its purpose limits freedom of contract in certain particulars, this Court has pointed out that such is not the necessary effect of the statute; that

the Fourteenth Amendment must be interpreted in the light of the power to legislate for the public welfare or police power; that liberty of contract is not itself protected by the Fourteenth Amendment except insofar as it is an essential element or attribute of liberty itself; and that laws enacted for the public welfare do not operate as a deprivation of liberty merely because they regulate or restrict to a certain extent liberty of contract, one of the incidents of liberty. The decisions of this Court in *Erie R. R. Co.* v. *Williams,* 233 U. S., 685, upholding a law fixing the time of payment of wages; in *Chicago, B. & Q.* v. *McGuire,* 219 U. S., 549, involving the Employers' Liability Act, and the recent decision in *German Alliance Ins. Co.* v. *Kansas,* 233 U. S., 389, involving the power of the State to regulate charges of insurance companies illustrate this phase of the question. But this Court has never gone so far as to hold a law enacted in furtherance of the public welfare may deprive a citizen of liberty or property without due process of law. For instance, a law directing the arrest of a person would unquestionably constitute a deprivation of liberty even though the law was enacted in furtherance of public welfare, and such an act could not be effectuated unless due process of law were afforded to the individual. Similarly a law providing for the taking of all property owned by a single individual in excess of $10,000,000 would constitute a taking

of property without due process of law, though it might be admitted that the limitation of fortunes to that extent was in furtherance of public welfare, the question in all these cases in which public welfare is the test being whether or not the exercise of the general power of government went so far as to constitute a deprivation of property or liberty. *Erie R. R. Co.* v. *Williams*, 233 U. S., 685, 699.

But once it is conceded that the act if enforced will deprive a man of property or liberty, then the only question is whether the individual affected has been afforded due process of law. As said by this Court in *Eubank* v. *Richmond*, 226 U. S., 137, 142,

Eubank v. Richmond.

> police power "is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals, and safety, but to those which promote the public convenience or the general prosperity. *C., B. & Q. Ry. Co.* v. *Drainage Commissioners*, 200 U. S., 561. And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.' *District of Columbia* v. *Brooke*, 214 U. S., 138, 149. *But necessarily it has its limits and must stop when it encounters the prohibitions of the Constitution.*"

Police power as an element of due process of law.

When the case is such that there can be no doubt that the individual has been deprived of liberty or property the question of whether or not due process of law has been accorded is not determined by the conclusion that the statute was enacted in furtherance of public welfare. The question of what is or what is not in furtherance of public welfare is primarily a legislative question. What constitutes due

process of law is a judicial question. If the object of the legislation be the protection of health then due process of law may require no more than legislative action. For instance, a man suffering from smallpox may be isolated and confined pursuant to legislative mandate. The owner of infected food may have that property confiscated in the same manner without being deprived of any constitutional right. This is because due process of law requires no more than legislative action when the object of the legislation is the protection of public health and the extent to which the individual is deprived of liberty or property is not other than such as is reasonably necessary to effectuate that object.

Where, however, the object of the legislation is to destroy rights protected by the Constitution in order to establish conditions deemed in furtherance of public welfare, due process of law generally requires the amendment of the Constitution itself. If the legislative department reached the conclusion that the economic theory of socialism was sound and that public welfare required its adoption this Court could not decide otherwise. But when, in order to establish this theory, a statute is passed abrogating the right of property, this Court could and would decide that due process of law required the amendment of the Constitution.

Dual meaning of police power.

The term police power has, unfortunately, been used to describe not only the reserved power of gov-

ernment, a power with regard to which the phrase "deprived of liberty or property" must be interpreted, but also that small and limited class of objects to the attainment of which legislative action does of itself constitute due process of law though rights protected by the Constitution are invaded.

THE STATUTE IS NOT A HEALTH LAW.

The question of the purpose of a statute is a judicial question and must be determined in accordance with the settled rules of law.

In *Minnesota* v. *Barber*, 136 U. S., 313, 319, this was pointed out, the Court saying:

Rules of law pursuant to which the purpose of the statute must be determined.

> "In *Mugler* v. *Kansas*, 123 U. S., 623, 661, the court, . . . said that the judiciary must obey the Constitution rather than the law making department of the government, and must, upon its own responsibility, determine whether, in any particular case, the limits of the Constitution have been passed. It was added: 'If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.' Upon the authority of those cases, and others that could be cited, it is our duty to inquire, in respect to the statute before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining those objects, but whether by its necessary or natural operation it impairs or destroys rights secured by the Constitution of the United States."

Soon Hing v. Crowley

In *Soon Hing* v. *Crowley*, 113 U. S., 703, the Court laid down the rule by which the purpose of a legislative act must be ascertained, as follows:

> "The rule is general, with reference to the enactments of all legislative bodies, that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferrable from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments."

The language of the Court in *Minnesota* v. *Barber*, 136 U. S., 313, and *Mugler* v. *Kansas*, 123 U. S., 623, set forth above, was also referred to with approval in the opinion of Mr. Justice Harlan in *Lochner* v. *New York, supra*, and in the opinion of the Court in that case the established rules were announced and followed without question, Mr. Justice Peckham saying:

Lochner v. N. Y.

> "It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. *The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose.* *Minnesota* v. *Barber*, 136 U. S., 313; *Brimmer* v. *Rebman*, 138 U. S., 78. The Court looks beyond the mere letter of the law in such cases. *Yick Wo* v. *Hopkins*, 118 U. S., 356.
>
> "It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found, and the plaintiff in error convicted, has no such direct relation to and no such substantial effect upon the health of the employe, as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employes (all being men, *sui juris*), in a private business, not dangerous in any degree to morals or in any real and substantial degree, to the health of the employes. Under such circumstances the freedom of master and employe to contract with each other in relation to their employment, and in defining the same, cannot be

prohibited or interfered with, without violating the Federal Constitution."

Lochner v. *New York*, 198 U. S., 64.

Though as stated the question of the purpose of the law is primarily judicial, the question of whether the restriction imposed by the law is reasonable or unreasonable in the light of an assumed object is a question of fact, and the determination of the purpose of the law may rest on the conclusion reached on this question of fact. As it is well settled that courts will not declare a law unconstitutional in doubtful cases the result is that where the question of the constitutionality of a law is dependent on a question of fact, the conclusion of fact on which such a decision rests must be clear and free from reasonable doubt, or the law cannot be declared invalid. For as said by Mr. Justice Harlan in *Lochner* v. *New York, supra:*

Lochner v. N. Y. Opinion of Mr. Justice Harlan.

"If there be doubt as to the validity of the statute, that doubt must therefore be resolved in favor of its validity, and the courts must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation. If the end which the legislature seeks to accomplish be one to which its power extends, and if the means employed to that end, although not the wisest or best, are yet not plainly and palpably unauthorized by law, then the Court cannot interfere. In other words, when the validity of a statute is questioned, the burden of proof, so to speak, is upon those who assert it to be unconstitutional."

Lochner v. *New York*, 198 U. S., 68.

Muller v. Oregon.

The difficulty with cases of this class arises from divergent views on these questions of fact. In *Muller* v. *Oregon,* 208 U. S., 412, Mr. Justice Brewer pointed this out, saying:

> "Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

Muller v. *Oregon, supra,* 420, 421.

If the purpose of the act under consideration be ascertained in accordance with the accepted rules of this Court, the assumption that the act is a health law,—an assumption indulged by the Supreme Court of California and by the District Court,—cannot be justified.

Analysis of California Statute.

Section 1 of the act provides that no female shall be employed in certain designated places or by certain designated companies more than eight hours in any one day.

The list of designated places may be divided into groups; they are: The classification adopted.

Mercantile Establishments,	Manufacturing Establishments,
Hospitals,	Mechanical Establishments,
Apartment Houses,	Telephone or Telegraph Establishments,
Hotels,	Restaurants.
Public Lodging Houses,	
Places of Amusement,	
Laundries,	

The companies prohibited from employing women for more than eight hours a day in any place are:

(1) Transportation Companies.

(2) Express Companies.

Agriculture and Domestic Science.

Speaking broadly the Statute, regardless of express exceptions, covers the entire field within which women are employed, saving that of agriculture and domestic service.

Bases for the claim that Statute is a health law.

The term "Mercantile Establishment" is probably used in the wide sense including all business conducted for profit, but if the narrow construction be adopted, the wide sweep of the act is not materially restricted; yet there is not a single place specified in the Statute, with the possible exception of Laundries, which is of itself an unhealthy place in which to work. It has been recognized in recent times that the conditions of labor in connection with machinery subject the worker to an abnormal strain, so if this act covered only mechanical and manu-

Bases for the claim that Statute is a health law. (Continued).

facturing establishments it might be argued that it was intended to protect the nervous systems of the workers against the strain of working in connection with machinery, or where machinery sets the pace.

But in the last few years the courts of some of the States, struggling to uphold legislation, have reached the conclusion that *possibly* labor which involves coming in contact with, and responding to, the demands of the general public, carries with it a strain similar to that of keeping time with machinery. This hypothesis is probably true in some cases but clearly untenable in others. So far as we are aware it is of judicial origin and lacks the confirmation of medical statistics. The Supreme Court of Illinois recently expressed itself on this subject as follows:

People v. Elerding.

> "It is insisted the classification of hotels as a place where employment of females is limited to ten hours is arbitrary, and that the statute discriminates between labor in hotels and other like places, such as boarding houses. The classification is not necessarily based on place of the kind of labor performed, but rather on the character of the business requiring the work, together with the environment and surrounding circumstances under which the work is done. The physical exertion required for the performance of a given amount of work, if measured by muscular effort, may be as great in one place as another. If there be a difference upon which this classification is justified, it must exist because of the surroundings which tend to govern the manner or method of doing the work, such as the movements of associate workmen or of machinery, the necessity of continuous speed to meet the demands of others, and the sanitary conditions and moral atmosphere of the place of occupation. So far as the sanitary conditions and moral atmosphere of the place

where the work is done are concerned, the police power of the State may be invoked to remedy any evils which may exist, but that may be accomplished by appropriate legislation directed to that end without limiting the hours of exposure to such conditions. The mere fact that some hotels, or all hotels, if such were the fact, are improperly ventilated and foul air is breathed by the employes, or, owing to contact with the traveling public, disease may be contracted more readily than in other places, is not a sufficient justification for limiting the hours in which women may be employed in those places. The Legislature has ample power, by direct legislation, to remedy such conditions if they exist. By this enactment it is not sought to change the conditions under which the labor is performed or the character of the labor, but merely to limit the hours of its duration. There is a marked distinction between hotels and boarding houses. A hotel is a quasi public place, and it is within the province of the police power to regulate occupations or business enterprises of a quasi public nature, such as, if unrestricted in their exercise, may be injurious to the health, safety, or general welfare, even though the business is perfectly lawful. This power is so important and comprehensive that its application must be allowed to expand from time to time, to meet new conditions and promote the public welfare. The proprietor of a hotel is engaged in a public business. The demands made upon the employes come from the public and are not altogether dependent upon or controlled by the employer. The unceasing change of guests requires constant attention and continuous effort to supply their wants and satisfy their needs. The speed with which the employes act, and to a large extent the manner of performing their work, are controlled by the public. The pressure of work comes from sources independent of the employer. No method of regulating the demands of the public under such conditions is practicable, but the time such demands may be made upon the employes may be limited. We are of opinion the nature of the business is such as to afford a valid basis for classifying work in hotels as an occupation authorizing its inclusion in the law limiting the hours of labor for females. The pressure and tension under which the labor is performed afford as reasonable a basis for classifi-

cation as the work done in lines of employment where machinery is used."

People v. *Elerding*, 254 Ill., 579, 98 N. W., 985.

Obviously this is as far as, if not further than, any self-respecting tribunal can go. Indeed, as matter of fact, the decision is clearly unjust as the Court assumes that hotels are fairly represented as a class by a relatively small number of large hotels situate in great cities, the patronage of which is primarily transient, the great majority of hotels situate in small towns and cities being utterly ignored. But passing this rather obviously unfair method of ascertaining the characteristics of the class, can it be fairly said that work in mercantile establishment, or apartment house, or hospital is done in a place which is *per se* unhealthy, or under conditions which subject the worker to injurious strain? We submit it cannot, unless the great department stores are considered as typifying all mercantile establishments and similar selections are made to represent hospitals and apartment houses.

Mercantile establishments, hospitals and apartment houses.

The inclusion of mercantile establishments, hospitals and apartment houses in the classification removes the ground on which the argument or hypothesis that the act is a health law may be rested, at least as far as the restrictions applicable to these places are concerned. So far as we are aware it never has been, and cannot reasonably be, said

that more than eight hours' work a day is injurious to health when there are no special circumstances accompanying the work or surrounding the worker other than the fact that the work is done in a mercantile establishment, a hospital or an apartment house. Neither actual experience nor scientific investigation affords any basis for such a claim. It seems clear, therefore, that these provisions of the statute are not enacted with the view of protecting public health.

Consideration of other provisions of the Statute leads to the same conclusion.

Effect of imposition of penalties on employer alone

The Statute imposes no penalty on the employee; the employer alone is punished, consequently the only effect of the Statute is to prevent a woman working any more than the prescribed period for a particular employer. If she desires she may work sixteen or eighteen hours a day if no more than eight hours work be done for the same employer.

This result was readily perceived, and the keepers of hotels and restaurants, and women working therein, were quick to avail themselves of it. Accordingly, the custom arose among women working in these places of contracting with different employers for work during different periods of the day, each period being less than the prescribed eight hours but the sum of both periods exceeding that length of time.

Prior to 1913 this custom had become fairly well

established and though it might at first blush seem that the result was accidental, at least so far as the Act of 1911 is concerned, the history of the Act of 1913 shows that such an explanation of the present Statute is not possible.

History of the Amendment of 1913.

As already stated this custom of contracting was in vogue prior to 1913. When the Act of 1913 was introduced in the Assembly it contained a section prohibiting contracts of this class.

Section 2 of Senate Bill No. 466, introduced January 20th, 1913, then provided:

> "Sec. 2. Where a female is employed in the same day or week by more than one concern or employer in any establishment or occupation named in section one of this act, the total time of employment must not exceed that allowed per day or week in a single establishment or occupation. It shall be the duty of the employer to make diligent inquiry as to such previous or other employment of such female employees elsewhere and as to the hours of such employment. Any person who shall require or permit a female to work in violation of the provisions of this section shall be liable for a violation thereof, and the employment of such female in excess of the total time of employment permitted by law shall be presumed in the absence of evidence to the contrary to be with knowledge of such violation."

This bill was amended in committee and this paragraph omitted therefrom. As so amended it passed both houses and received the approval of the Governor, the same being Chapter 352 of the Chartered Laws of California. As a result there is no escape from the fact that the law under consideration is and was intended to be a law limiting the

The law limits hours of labor for a single employer only.

time for which women may work for a particular employer. It is a law limiting the hours of employment rather than the hours of labor. This fact points clearly to the conclusion that the object of the law is the readjustment of economic conditions, not the preservation of health.

The law limits hours of labor for a single employer only. (Continued).

The provisions of the Statute dealing with transportation and express companies emphasize the economic character of the law. So far as these corporations are concerned, the Statute is frankly a law limiting the labor return which the employer can receive from its employee. It cannot be pretended that the general business of these companies imposes an unusual strain upon the departments in which women are customarily employed, but even if it could, there is no conceivable reason on the score of health why the employees of an express company should be put in a different category from that in which the employees of individuals conducting an express business are included.

We have already stated that as matter of fact there is no general opinion current in the country, or in the world, justifying the view that, irrespective of special conditions, work for more than eight hours a day or forty-eight hours a week is injurious to women.

Eight hour day not necessary for protection of health.

The Statute under consideration was enacted in 1911 and it is but proper to view it in the light of the legislation of the world in force at that time.

A summary of the laws governing the hours of labor of women is to be found in Bulletin No. 118, of the Bureau of Labor Statistics, U. S. Department of Labor, from which the following table is compiled:

EUROPEAN LEGISLATION.

Legislation of other countries.

STATES IN WHICH THE HOURS OF LABOR OF WOMEN ARE LIMITED IN FACTORIES AND WORK-SHOPS TO 10 HOURS PER DAY, AND FROM 58 TO 60 HOURS PER WEEK.

GREAT BRITAIN
Saturdays 7½ hours.

GERMANY
Saturdays 8 hours.

NETHERLANDS
FRANCE
SERVIA
BULGARIA
ROUMANIA

In Switzerland and Austria the general limitation is 11 hours a day and from 64 to 66 hours per week; in Russia the limitation is 11½ hours a day and 67½ hours a week; while in Italy the 12 hour day is permissible.

AMERICAN LEGISLATION.

In the United States the provisions of the laws of the various States were as follows: Legislation of other States.

MASSACHUSETTS, MICHIGAN, OHIO:
10 hours a day; 54 hours a week.

CONNECTICUT, MAINE, MINNESOTA:
10 hours a day; 58 hours a week.

RHODE ISLAND:
10 hours a day; 6 hours Saturday.

NEW HAMPSHIRE:
9 hours and 40 minutes a day; 58 hours a week.

ILLINOIS:
10 hours a day.

WISCONSIN:
10 hours a day; 55 hours a week.

OREGON, VIRGINIA, GEORGIA, PENNSYLVANIA:
60 hours a week; not more than 12 hours in any day.

SOUTH CAROLINA:
60 hours a week; not more than 11 hours in any day.

LOUISIANA, KENTUCKY, NEW YORK, NEBRASKA, MISSISSIPPI:
10 hours a day.

MISSOURI:

9 hours a day; 54 hours a week.

ARIZONA:

8 hours a day; 48 hours a week, but only for women in the laundry department of laundries.

Australasian legislation.

AUSTRALASIA.

QUEENSLAND, VICTORIA:

10 hours a day; 48 hours a week.

NEW SOUTH WALES, SOUTH AUSTRALIA:

48 hours a week.

WESTERN AUSTRALIA:

8 hours and 45 minutes a day; 48 hours a week.

NEW ZEALAND:

8¼ hours a day; 45 hours a week except in woolen factories where 8¾ hours a day and 48 hours a week is authorized. This law applies to both men and women.

For the sake of brevity, we have not specified the particular occupations to which these statutes apply, but it is generally true that the acts were primarily factory acts and applied to labor performed in connection with machinery or where the speed of the worker was set by machinery. In England, however, the Shop Act was in existence. In New Zealand the basis of the legislation was obviously

socialistic, and this is generally true of the laws of Australasia, which were the expression of economic ideas and theories of social justice.

Drastic character of California Act.

The Statute under discussion contains a more drastic limitation of the hours of labor than any law theretofore enacted. The scope of the Act is so broad that it is obvious that the limitation was not imposed for the protection of health; at least if existing legislation may be considered as a standard of comparison. No investigation was conducted in California prior to the passage of the Act, and so far as we are aware no investigation conducted in any part of the world supports the view that the restriction of the labor of women in mercantile establishments, hospitals, or apartment houses, to the period of 8 hours a day or 48 hours a week is called for as a health measure.

In the year 1911 the theories of social justice entertained by a part of the people became the basis of political discussion, and in that year, and the succeeding years, legislation of the class under consideration was enacted, sometimes under the assumed guise of health laws, sometimes without any pretense of such a basis.

The chart printed as an appendix to this brief is an attempted summary of recent legislation on this subject. (See Appendix.)

Viewed in the light of existing legislation there is apparently no general belief or commonly ac-

cepted point of view justifying the assumption that work for more than eight hours a day or forty-eight hours a week is injurious to the health of women. Certainly there are no special or peculiar conditions incident to work of women in mercantile establishments, hospitals or apartment houses justifying such a conclusion.

Statute goes further than proper for protection of health.

In *Low* v. *Rees Printing Company*, 59 N. W., 362, 368, the Supreme Court of Nebraska had under consideration a statute which among other provisions contained the following clause:

> "Section 1. Eight hours shall constitute a legal day's work for all classes of mechanics, servants and laborers through the State of Nebraska, excepting those engaged in farm and domestic labor."

The Court said:

> "A full and careful examination of all the questions presented has satisfied us that sections 1 and 3 of the act discussed are unconstitutional, for the reasons above assigned. The legislation attempted cannot be defended as a police regulation, as was attempted in argument; for, under pretense of the exercise of that power the legislature cannot prohibit harmless acts, which do not concern the health, safety, and welfare of society. *Millett* v. *People, supra; Frorer* v. *People, supra; State* v. *Loomis, supra; Ex parte Kuback*, 85 Cal., 274, 24 Pac., 737; *In re Jacobs, supra; People* v. *Gillson, supra.* The claim that this act was a proper exercise by the legislature of its police power cannot be sustained. It results that the judgment of the district court is affirmed."

Ritchie v. People.

In *Ritchie* v. *People*, 155 Ill., 98, the Supreme Court of Illinois declared invalid a statute

limiting the hours of labor of women in certain occupations to eight hours a day, the Court saying: Ritchie v. People.

> "There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow."

If a law limiting the hours of labor of women in pursuits such as those included in the classification embraced in this Statute is reasonably necessary for the protection of health, then a law limiting to the same extent the hours of labor of women engaged in any occupation is equally necessary. If this be the case, every court, with the exception of the Supreme Court of California, has been in error when passing on the question, and every State but California derelict in its duty.

The conclusion that the purpose of the Act is not the preservation of public health is supported not only by a consideration of the field covered by the Act, but also by a consideration of the exceptions embodied in the Statute, as well as the limitation of the classification on which the Act rests. Exceptions to Act negative claim that is a health law.

Employees of persons engaged in the practice of professions and arts are not included in the Act unless the term "mercantile establishments" be interpreted in the liberal sense, but conceding that no deduction fatal to the Statute should be drawn from an hypothesis which rests on interpretation, still it is

Exceptions to Act negative claim that it is a health law (Continued).

clear that the Act does not apply to domestic service or agricultural labor. Obviously this is due to considerations of public convenience coupled with political power. It cannot be contended that the strain of agricultural labor is less burdensome upon a woman than that of labor in mercantile establishments, or that experience has shown that the health of women engaged in this pursuit is better preserved than that of women engaged in mercantile establishments.

Domestic service is one of the principal occupations in which labor is performed by women. From such statistics as exist this field of labor appears to be more injurious to the health of the worker than the great majority of occupations or places to which the Act applies. Certainly the percentage of insanity is higher in the fields to which the Act does not apply, than those regulated by it.

Absence of an Emergency Clause.

In addition to all other considerations the fact that the Statute contains no emergency clause shows that the preservation of health was not the object of the law. No detriment to health could reasonably be anticipated if more than eight hours were permitted in order to meet the emergencies of life. It is, however, well known that those advocating the enactment of labor laws on economic grounds have firmly opposed the introduction into such statutes of any element of elasticity.

In concluding this branch of the discussion we submit that the Act cannot be viewed as a health measure, but must be regarded as a strict and unyielding law designed to advance the economic welfare of certain of the women engaged in labor in the places specified in the Statute, or employed by companies of the class therein mentioned.

True object of the Act

LAWS LIMITING THE PERIOD OF TIMF FOR WHICH ADULTS MAY WORK AT A LAWFUL CALLING OPERATE TO DEPRIVE THOSE SUBJECT THERETO OF LIBERTY.

The right to pursue an ordinary calling is an essential part of the right of liberty protected by the Fourteenth Amendment.

Allgeyer v. *Louisiana,* 165 U. S. 578.

Smith v. Texas.

As said by this Court in *Smith* v. *Texas,* 233 U. S., 636:

> "Insofar as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude and the constitutional guaranty is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

Lochner v. N. Y. Prevailing opinion.

In *Lochner* v. *New York,* 198 U. S., 45, the rules of law relating to this subject were clearly set forth. That case involved the validity of a law limiting the hours of labor of bakers to ten hours a day. The Court said:

> "It is a question of which of two powers or rights shall prevail—the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and

in his power to contract in relation to his own labor" (p. 58).

Lochner v. N. Y. Prevailing opinion. (Continued.)

"It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course, the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

"Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation" (pp. 56, 57).

The case was decided by a divided court, but the portion of the opinion quoted above met with the approval of all the justices with the exception of Mr. Justice Holmes. The majority of the court

reached the conclusion that the trade of a baker was not an unhealthy trade, this conclusion being a pure conclusion of fact. As a result the Court declared the law invalid, saying:

> "It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found, and the plaintiff in error convicted, has no such direct relation to and no such substantial effect upon the health of the employe, as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employes (all being men, *sui juris*), in a private business, not dangerous in any degree to morals or in any real and substantial degree, to the health of the employes. Under such circumstances the freedom of master and employe to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution" (p. 64).

Lochner v. N. Y. Dissenting opinion.

In this opinion Justices Harlan, White and Day did not concur; they differed from the conclusion of the Court not so much on questions of law as on matters of fact. The decision was predicated on the fact that the trade of a baker was not an unhealthy trade, and that a law limiting the period of labor of those engaged therein to ten hours a day was not in fact necessary for the protection of the health of the worker. The dissenting opinion of Mr. Justice Harlan, joined in by Mr. Justice White and Mr. Justice Day, takes issue with the decision of the Court on these questions of fact.

In the opinion of Mr. Justice Harlan it is said:

"In *Jacobson* v. *Massachusetts, supra,* we said that the power of the courts to review legislative action in respect of a matter affecting the general welfare exists *only* 'when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law'—citing *Mugler* v. *Kansas,* 123 U. S., 623, 661; *Minnesota* v. *Barber,* 136 U. S., 313, 320; *Atkin* v. *Kansas,* 191 U. S., 207, 223. If there be doubt as to the validity of the statute, that doubt must therefore be resolved in favor of its validity, and the courts must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation. If the end which the legislature seeks to accomplish be one to which its power extends, and if the means employed to that end, although not the wisest or best, are yet not plainly and palpably unauthorized by law, then the court cannot interfere. In other words, when the validity of a statute is questioned, the burden of proof, so to speak, is upon those who assert it to be unconstitutional. *McCullock v. Maryland,* 4 Wheat., 316, 421."

"It is plain that this statute was enacted in order to protect the physical wellbeing of those who work in bakery and confectionery establishments. It may be that the statute had its origin, in part, in the belief that employers and employes in such establishments were not upon an equal footing, and that the necessities of the latter often compelled them to submit to such exactions as unduly taxed their strength. Be this as it may, the statute must be taken as expressing the belief of the people of New York that, as a general rule, and in the case of the average man, labor in excess of sixty hours during a week in such establishments may endanger the health of those who thus labor. Whether or not this be wise legislation it is not the province of the court to inquire. Under our systems of government the courts are not concerned with the wisdom or policy of legislation. So that in determining the question of power to interfere with liberty of contract, the Court may inquire whether the means devised by the State are germane to an end which may be lawfully accomplished and have a real or

Lochner v. N. Y. Dissenting opinion. (Continued).

> substantial relation to the protection of health, as involved in the daily work of the persons, male and female, engaged in bakery and confectionery establishments. But when this inquiry is entered upon I find it impossible, in view of common experience, to say that there is here no real or substantial relation between the means employed by the State and the end sought to be accomplished by its legislation. *Mugler* v. *Kansas, supra.* Nor can I say that the statute has no appropriate or direct connection with that protection to health which each State owes to her citizens, *Patterson* v. *Kentucky, supra;* or that it is not promotive of the health of the employes in question."

Lochner v. *New York, supra,* 68, 69.

In other words there was no particular difference in point of law between the members of the court concurring in the opinion of Mr. Justice Peckham, or those concurring in the opinion of Mr. Justice Harlan.

The differences in opinion merely emphasize the fact that in passing on the validity of a law respecting rights guaranteed by the Fourteenth Amendment, three questions are always presented:

(1) Does the law invade the liberty of the individual guaranteed by the Constitution?

(2) Is the object which the legislature designed to accomplish by the law such that the rights protected by the Fourteenth Amendment may be modified by legislative act in order to achieve the desired result?

(3) Conceding that the object of the statute is such that constitutional rights may be restricted by

direct legislative action in order to effectuate it, is the restriction imposed reasonable or arbitrary and unnecessarily oppressive?

In *Muller* v. *Oregon*, 208 U. S., 412, this Court upheld the Oregon Act of 1903, which prohibited the employment of women in mechanical establishments, factories or laundries more than ten hours a day. The opinion proceeds on the assumption that such a restriction could not be upheld if applicable to men, but points out that the fundamental physical differences between men and women, coupled with the general consensus of opinion to the effect that a ten-hour law may be reasonably considered as a proper limitation for the protection of the health of women laboring in certain occupations, render the provision prohibiting labor in laundries valid as a health law, the Court saying: Muller v. Oregon.

> "For these reasons, and without questioning in any respect the decision in *Lochner* v. *New York*, we are of the opinion that it cannot be adjudged that the act in question is in conflict with the Federal Constitution, so far as it respects the work of a female in a laundry."
>
> *Muller* v. *Oregon*, 208 U. S., 423.

These decisions clearly establish that the right to labor is a constitutional right and that this right can only be abridged by legislative action when that action of itself constitutes due process of law.

The Lochner case lays down the rule that at least so far as grown men are concerned, legislation limit-

ing the hours of labor can only be sustained when the act falls within the well defined classes of police power, such as the protection of health.

Women are not wards of the State.

We do not understand that the Muller case lays down any different rule so far as grown women are concerned. That case merely declares that owing to structural differences legislation restricting the hours of labor of women may be sustained as a health regulation; that is, its object may be the protection of health, though the same limitation could not be applied to men. It seems clear there was no intention to declare that women were wards of the State and therefore not entitled to the same protection which the Constitution afforded to men. On the contrary, the Court was careful to point out that the same constitutional rule applied, but that the decision rested on difference in fact arising from difference in physical structures.

Ritchie v. People.

In the case of *Ritchie* v. *People,* 155 Ill., 98, an eight-hour law for women was declared invalid, the Court saying:

> "The first section of the Fourteenth Amendment to the constitution of the United States provides: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.' It has been held that a woman is both a 'citizen' and a 'person' within the meaning of this section. *Minor* v. *Happersett,* 21 Wall., 162. The privileges and immunities here referred to are, in general, 'protection by the government, with the right to acquire and possess prop-

erty of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.' *Slaughterhouse Cases,* 16 Wall., 36. As a 'citizen,' woman has the right to acquire and possess property of every kind. As a 'person,' she has the right to claim the benefit of the constitutional provision that she shall not be deprived of life, liberty, or property without due process of law. Involved in these rights thus guaranteed to her is the right to make and enforce contracts. The law accords to her, as to every other citizen, the right to gain a livelihood by intelligence, honesty, and industry in the arts, the sciences, the professions, or other vocations."

The decision of the Supreme Court of California in the Miller case did not question the position here assumed, but was based on the hypothesis that the law under consideration was a health law. Indeed, the political equality of men and women is secured by the Constitution of the State of California, and it did not occur to the courts to suggest that woman in California was inferior to the male in legal or political right.

In referring to the status of women, the New York Court of Appeals said: People v. Williams.

"The tendency of legislatures, in the form of regulatory measures, to interfere with the lawful pursuits of citizens is becoming a marked one in this country, and it behooves the courts, firmly and fearlessly, to interpose the barriers of their judgments, when invoked to protect against legislative acts, plainly transcending the powers conferred by the Constitution upon the legislative body.

"In this section of the Labor Law it will be observed that women are classed with minors under the age of eighteen years; for which there is no reason. The right of the State, as *parens patriae,* to restrict, or to regulate, the labor and employment of children is unquestionable;

but an adult female is not to be regarded as a ward of of the State, or in any other light than the man is regarded, when the question relates to the business pursuit or calling. She is no more a ward of the State than is the man. She is entitled to enjoy, unmolested, her liberty of person, and her freedom to work for whom she pleases, where she pleases and as long as she pleases, within the general limits operative on all persons alike."

"So I think, in this case, that we should say, as an adult female is in no sense a ward of the State, that she is not to be made the special object of the exercise of the paternal power of the State, and that the restriction, here imposed upon her privilege to labor, violates the constitutional guarantees. In the gradual course of legislation upon the rights of women, in this State, she has come to possess all of the responsibilities of the man and she is entitled to be placed upon an equality of rights with the man."

People v. *Williams*, 189 N. Y. Rep., 135, 137.

The decisions of this Court and the weight of authority in the State courts sanction the view that laws restricting the hours of labor, either of adult men or women, do operate to deprive those to whom they apply of liberty.

Lochner v. N. Y. Opinion of Mr. Justice Holmes.

There is, however, a different view which was expressed by Mr. Justice Holmes in a dissenting opinion in the *Lochner* v. *New York* case. In that opinion it was said:

"I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man

might think it a proper measure on the score of health. Men whom I certainly would not pronounce unreasonable would uphold it as a first installment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss."

Lochner v. N. Y. Opinion of Mr. Justice Holmes. (Continued.)

Lochner v. *New York*, 198 U. S., 76.

The view here expressed by Mr. Justice Holmes concerns exclusively the interpretation of the phrase "deprived of liberty." The opinion concedes that the constitutional guaranty does to some extent check the natural outcome of dominant opinion, but lays down a rule of constitutional construction more hostile than that usually applied to a policy of insurance. It is undoubtedly true that in construing this provision of the Constitution, the Court must consider the reserved power of government, which is no more than the right of the majority to enact laws, but as the very object of the amendment was to limit this right, the Court should not adopt a rule of construction which can be justified only on the theory that the effect of the amendment was purely accidental and should be restrained as far as possible by construction. Indeed, the rule of interpretation suggested by Mr. Justice Holmes is so strict that it would if adopted place the legislative body in control of the interpretation of the Constitution. The mere passage of a law necessarily carries with it a declaration that the members of the legislature did not interpret the Constitution as prohibiting its

Discussion of opinion of Mr. Justice Holmes.

Discussion of opinion of Mr. Justice Holmes. (Continued.)

enactment or execution. The Court must necessarily assume that the members of the legislature are fair men. They are sworn to uphold the Constitution. So the mere enactment of a law is conclusive evidence that some fair men acting under oath to uphold the Constitution do not admit that the law passed violates fundamental principles as they have been understood by the traditions of our people and our laws.

Meaning of the term liberty.

The term liberty should be fairly construed as including things which were considered as embraced therein at the time the Fourteenth Amendment was adopted. The sum of what a word of this character implies and means doubtless differs with people of different traditions living under different forms of government. In a social democracy the word may means no more than equality before the law; to those living under a despotic form of government freedom from arrest may be the only idea conveyed, but in a republic or to those living under a republican form of government the word means more. As said by this Court in *Smith* v. *Texas,* 233 U. S., 630:

> "Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."

In *Lochner* v. *New York,* 198 U. S., 45, this Court held that a law limiting the hours for which a man might work operated to deprive him of

liberty and the same principle has been announced in the following cases: Meaning of the term liberty. (Continued)

Allgeyer v. *Louisiana,* 165 U. S., 578;

Addyston Co. v. *U. S.,* 175 U. S., 211;

Ex Parte Drayton, 153 Fed., 989;

In re Sing Tuck, 126 Fed., 388;

State Ex. Rel. Galle. v. *New Orleans,* 113 La., 371.

Inasmuch as the statute under consideration operates to deprive appellants of liberty its validity depends upon the question of whether or not this has been done without affording to the appellants due process of law.

THE STATUTE OPERATES TO DEPRIVE APPELLANTS OF LIBERTY WITHOUT DUE PROCESS OF LAW.

It is of course well settled that in certain cases legislative action alone or coupled with administrative action constitutes due process of law. Many cases illustrate the fact that persons may be deprived of liberty or property by legislative action.

Lawton v. Steele.

As said by this Court in *Lawton* v. *Steele*, 152 U. S., 133, 136:

> "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of gambling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. *Barbier* v. *Connolly*, 113 U. S., 27; *Kidd* v. *Pearson*, 128 U. S., 1. To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those

> of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

There is no doubt that the legislation in question would be valid if the law were enacted as a health measure and the restrictions imposed were no more than reasonable to accomplish that object. But we have we believe shown beyond question that the object of the law is not the protection of public health. The object of the law is at best the amelioration of the condition of certain working classes. To this end the people in general are deprived of liberty.

In *Lochner* v. *New York,* 198 U. S., 45, this Court declared that such legislative action did operate to deprive those affected thereby of liberty without due process of law, the Court deciding that such legislation could be viewed as affording due process of law only when the object of the legislation was the protection of the public health. Lochner v. N. Y.

In *Muller* v. *Oregon,* 208 U. S., 412, the same rule was laid down and the statute supported as a health law. Muller v. Oregon.

In the Miller case the Supreme Court of California obviously entertained the view that the law must be sustained if at all as a health law. No court in this country has declared that such laws could be sustained on any other basis.

This Court has repeatedly refused to attempt to

Police power.

define the limits of police power, but as said in the Mugler case, the Fourteenth Amendment was not intended to abridge the right of the State to legislate for the protection of the health or morals of the people. It cannot, however, be pretended that the liberty of the individual which is protected by the Constitution can be invaded by laws passed for the general good.

The term police power has been used to describe legislative power and in this sense it includes power to pass any law which does not invade rights guaranteed by the Constitution, but the term has also been used in a narrower sense as referring to laws which do invade constitutional rights but are enacted in furtherance of certain limited objects to the attainment of which constitutional guarantees give way or for the achievement of which legislative action alone suffices.

Without attempting a definition of police power in the sense necessary to support an act of this character it is obvious that legislation which can be supported only by reference to it, must have some basis in the commonly accepted moral ideas of the people. For instance if the commonly accepted ideas of right and wrong as the same exist in America were similar today to those existing in Turkey a law might well be sustained forbidding women to appear unveiled. If, however, such a law were enacted in America on the theory that the economic

stimulus resulting in the manufacture of veils was desirable, the statute would be invalid. The moral sentiment of the country on the subject of a living wage is such that a law prohibiting the employment of men or women at a sum honestly fixed as a living wage might be sustained, but a law providing that no hod carrier should be paid less than five dollars for a day's work would be declared invalid without hesitation, though such wages are today current in the City of San Francisco.[1] Police power.

The fact that the economic theories in vogue with certain sections of the people may countenance or even demand modification in rights of property or liberty even if these people be so numerous as to compose a majority in one or more States, is not sufficient to remove legislation enacted in furtherance of these views from the restraints imposed by the Fourteenth Amendment.

The accepted morality of this country is such that laws limiting the hours of labor should be and are sustained if the limitation imposed is reasonably necessary for the protection of the health of the worker or of the public. But laws limiting the hours of labor for the purpose of establishing the economic ideas of a class at the expense of the

[1] It may be worthy of note that a constitutional amendment providing for legislative action fixing a minimum wage was recently proposed and passed in California under the provisions of the Constitution authorizing the use of the initiative for that purpose. At the same time a universal eight-hour law failed to pass. During the course of the campaign a six-hour law was seriously advocated by one of the candidates for the United States Senate.

liberty of the individual, run counter to the accepted morality of today.

In conclusion on this branch of the argument, we beg to call to the attention of the Court the following extract from the opinion in *Mugler* v. *Kansas*, 123 U. S., 623, 661:

> "'To what purpose,' it was said in *Marbury v. Madison*, 1 Cranch, 137, 176, 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Conclusion.

The mere exercise of the right to live and to work cannot be made a crime under our constitution as it now exists. Legislation declaring criminal the legitimate exercise of liberty guaranteed by the Constitution does not constitute due process of law. The Constitution itself must be amended before such legislation can be enforced.

Muller v. *Oregon*, 208 U. S., 412.

THE STATUTE IS INVALID EVEN IF INTENDED AS AN EXERCISE OF POLICE POWER, THE RESTRICTIONS OF LIBERTY THEREIN CONTAINED BEING ARBITRARY AND UNNECESSARILY OPPRESSIVE.

The preceding argument rests largely upon the fact that the statute restricts the hours of labor of women to eight hours a day and forty-eight hours a week and the fact that such a drastic limitation of the hours of labor is not necessary to preserve the health of women in many if not all the occupations mentioned in the statute. From these premises and other incidental facts the conclusion is drawn that the statute is not to be viewed as an exercise of police power designed to protect public health. If, however, it be assumed that this conclusion does not necessarily flow from the premises, and if the assumption that the act may in its entirety be viewed as a health law be adopted, the act is nevertheless unconstitutional.

Conceding the object with which this statute was enacted to be the protection of health or some other object in furtherance of which the right of liberty guaranteed by the Constitution may be curtailed, it is, of course, well settled that limitation imposed in the exercise of the police power on constitutional rights must be reasonable, not arbitrary or unnecessarily oppressive.

Smith v. *Texas,* 233 U. S., 630, 636;

Smith v. *Alabama,* 124 U. S., 465, 480;

Lawton v. *Steele,* 152 U. S., 133, 137;

Lochner v. *New York,* 198 U. S., 56.

As said in *Smith* v. *Texas,* 233 U. S., 630, 636:

> " . . . as the public interest is the basis of such legislation, the tests and prohibition should be enacted with reference to that object and so as not unduly to 'interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations.' *Lawton* v. *Steele,* 152 U. S., 133, 137."

As said in *Lochner* v. *New York,* 198 U. S., 45, 56:

> "In every case that comes before this Court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?"

And as pointed out in *Muller* v. *Oregon,* 208 U. S., 412, this question is always a question of fact to be decided in the light of our existing knowledge. The question, therefore, is this: Assuming that the purpose of the statute is the preservation of the health of women or of the public, is the restriction imposed with the object of accomplishing this end reasonable, or unnecessary and arbitrarily oppressive? The restrictions imposed are:

1. Prohibition of the performance of more than eight hours work in any one day.

2. Prohibition of the performance of more than forty-eight hours work in any one week.

The statute makes no provision for the emergencies of life, the limit prescribed being in all cases absolute and unyielding.

The question of fact on which this branch of the case depends must be answered in view of our knowledge as the same exists today. As said in *Muller* v. *Oregon*, 208 U. S., 412:

> "Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

Muller v. *Oregon, supra*, 420, 421.

Attention has already been called to the fact that no country in the civilized world imposes such oppressive and drastic limitations upon liberty of women, and this is strong evidence that common experience has shown such are unnecessary. We do not, however, desire to repeat facts stated in the prior pages of this brief, though in a somewhat different connection, but will merely refer thereto. However, we respectfully submit that the limita-

tions contained in the statute are obviously arbitrary and unnecessarily oppressive, and this is particularly true of women working in hospitals. The absence of an emergency clause indeed operates most oppressively in such cases. See *Lochner* v. *New York*, 198 U. S., 45. But apart from this, as said by the Supreme Court of Massachusetts:

> "There is nothing in ordinary labor, by men of full age, for more than eight hours a day, that calls for prohibition in the interest of the public health, the public safety, the public morals, or the public welfare. It is obvious that many of the most successful men could not have attained the prosperity which they have enjoyed if prohibited from working for themselves or contracting to work for others more than a small part of the hours of each day."
>
> *Opinion of Justices*, 208 Mass., 622.

We submit that this remark is true of women as well as men. Indeed, it has been so decided in *Ritchie* v. *People*, 155 Ill., 98. The Court said:

> "There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel —for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow."

In conclusion, we respectfully submit that the law under consideration must be declared invalid or the

Constitutional provisions subordinated to the power of the legislature.

It is one thing to uphold a law enacted for the purpose of protecting the health of men or women from sacrifice to the greed of capital. It is a very different thing to uphold a law limiting the freedom of the individual enacted not for the protection of the health of the class to which that individual belongs but designed to sacrifice the ambitious in order that the less industrious members of the class may work shorter hours. The law under consideration is, we believe, the first statute which has come before any court applying to organizations primarily charitable such as hospitals. It is the first attempt by legislation to curtail the hours of labor of students and members of professional classes. It is the first attempt to increase the remuneration of the working class at the expense of the very poor. It is strange, but the act is so framed that the poor are those primarily affected by it for the statute operates to increase to a very marked degree the cost of maintaining hospitals and the primary beneficiaries of hospitals are the poor. If the question of general welfare were one on which a court could override the decision of the legislature there would be little difficulty in showing that the effect of the statute was not to promote the general welfare, at

least so far as hospitals and those employed therein are concerned.

Respectfully submitted.

Charles J. Whalen and
John F. Bowie
Attorneys for Appellants.

John F. Bowie
Counsel.

CHARTS

TOO

LARGE

FOR

FILMING

MILLER *v.* WILSON, SHERIFF OF RIVERSIDE COUNTY, STATE OF CALIFORNIA.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 112. Argued January 12, 1915.—Decided February 23, 1915.

The liberty of contract guaranteed by the due process clause of the Fourteenth Amendment is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest.

In determining the constitutionality of a state police statute the question is whether its restrictions have reasonable relation to a proper purpose; and reasonable regulations limiting the hours of labor of women are within the scope of legislative action. *Muller* v. *Oregon*, 208 U. S. 412; *Riley* v. *Massachusetts*, 232 U. S. 671; *Hawley* v. *Walker*, 232 U. S. 718.

While the limitation of the hours of labor of women may be pushed to an indefensible extreme, the limit of reasonable exertion of the protective authority of the State is not overstepped and liberty of contract unduly abridged by a statute prescribing eight hours a day or a maximum of forty-eight hours a week.

The legislature of a State is not debarred from classifying according to

general considerations and with regard to prevailing conditions otherwise there could be no legislative power to classify.

The legislature is free to recognize degrees of harm and may confine it restrictions to those classes where it deems the need is greatest, and if the law hits an evil where it is most felt the prohibition need not b all embracing. *Keokee Coke Co.* v. *Taylor*, 234 U. S. 227.

The statute of California of 1911 prohibiting the employment of women in certain businesses including hotels is not unconstitutional as t women employed in hotels, either as an unwarranted invasion o liberty of contract or as denying the equal protection of the law o the ground of unreasonable discrimination because of the omission of certain classes of female laborers from its operation, or becaus the classification is based on the employé's business and not upo the character of the employé's work.

162 California, 687, affirmed.

THE facts, which involve the constitutionality under the Fourteenth Amendment of the Women's Eight Hour Labor Law of California, are stated in the opinion.

Mr. Frank P. Flint and *Mr. Henry S. Van Dyke* for plaintiff in error, submitted:

The restrictions imposed by the Act upon women and their employers as to their freedom of contract in certain designated employments are not reasonably necessary, and are not such a necessary invasion of freedom of contract as will be justified under the sanction of the police power or of any other constitutional power.

The legislation is not necessary to safeguard the health of any considerable class nor is it justified by the needs of the community as a whole. As in *Ritchie* v. *Wyman*, 214 Illinois, 509, the police power's exercise must be reasonable and not confiscatory, like a war power, and must be absolutely necessary to the public health or safety. Bierly's Police Power, p. 13; *People* v. *Commonwealth*, 9 Michigan, 285; *Smiley* v. *McDonald*, 42 Nebraska, 5; *Railroad Co.* v. *State*, 47 Nebraska, 549; Russell's Police Powers, p. 34.

And see *Lawton* v. *Steele*, 152 U. S. 133; Brannon's Fourteenth Amendment, pp. 172, 202.

The limitation to eight hours a day and particularly the limitation to forty-eight hours a week is unnecessary and unreasonable as applied to hotels and many of the other enumerated employments. To hold such legislation unconstitutional is to promote humanitarian legislation for women, for it makes possible such humanitarian legislation as is consistent with their liberty and their means of livelihood; while, on the contrary, the present law, as to many employments, by an unnecessary curtailment of their usefulness, and therefore of their earning capacity, does more harm than good. *Lochner* v. *New York*, 198 U. S. 45, 61; *Ex parte Kuback*, 85 California, 274.

There is nothing in the ordinary labor, by men of full age for more than eight hours a day, that calls for prohibition in the interest of the public health, the public safety, the public morals, or the public welfare. *Lochner* v. *New York*, *supra*.

This doctrine is affirmed by every court in the union having occasion to pass upon the question, except in certain cases on the women's employment acts which are bad on principle and on precedent. *Seattle* v. *Smyth*, 22 Washington, 327; *In re Morgan*, 26 Colorado, 415.

Only when an occupation possesses such characteristics of danger to health of those engaged therein as to justify the legislature in concluding that the welfare of the community demands a restriction, can the hours of labor for men be limited by legislative enactment. *Re Martin*, 157 California, 51, 55.

For the history of legislation and adjudication in this country on limitation of hours of employment for women, see *Commonwealth* v. *Hamilton Mfg. Co.*, 120 Massachusetts, 383; *Holden* v. *Hardy*, 169 U. S. 366; *Commonwealth* v. *Beatty*, 15 Pa. Sup. Ct. 5; *Wenham* v. *State*, 65 Nebraska, 395; *State* v. *Buchanan*, 29 Washington, 604;

Muller v. *Oregon*, 208 U. S. 412; *Commonwealth* v. *Riley*, 97 N. E. Rep. 367; *State* v. *Somerville*, 122 Pac. Rep. 324; *People* v. *Elerding*, 98 N. E. Rep. 982; *People* v. *Chicago*, 100 N. E. Rep. 194; *State* v. *Newman Lumber Co.*, 59 So. Rep. 923; *Matter of Jacobs*, 98 N. Y. 98; *People* v. *Williams*, 189 N. Y. 131; *Low* v. *Rees Printing Co.*, 41 Nebraska, 127; *Burcher* v. *People*, 41 Colorado, 495.

The Act is vitiated by manifold and fatal discriminations, and is therefore unconstitutional.

The first and most obvious discrimination is the express exception of all women employed in harvesting fruit or vegetables. Several considerable classes of women employés, whose employments are in no wise distinguishable in any particulars from many of those included,—e. g., stenographers, clerks and assistants employed by the professional classes and all domestic servants, are totally omitted. *Cotting* v. *Godard*, 183 U. S. 79; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

The freedom to contract is protected from unreasonable restriction, similarly with every other proper freedom, by the Fourteenth Amendment. *Allgeyer* v. *Louisiana*, 165 U. S. 578–589; *State* v. *Peel Splint Coal Co.*, 36 W. Va. 856; *State* v. *Goodwill*, 33 W. Va. 179; *Barbier* v. *Connolly*, 113 U. S. 27; *Gulf &c. Ry.* v. *Ellis*, 165 U. S. 150; *Bell's Gap R. R.* v. *Pennsylvania*, 134 U. S. 237; *Low* v. *Rees Printing Co.* (Neb.), 59 N. W. Rep. 362; *Dougherty* v. *Austin*, 94 California, 620; *Darcy* v. *San Jose*, 104 California, 642; *Lodi* v. *State*, 51 N. J. L. 402; *Hellman* v. *Shoulters*, 114 California, 147; *Budd* v. *Hancock*, 66 N. J. L. 135; *Ex parte Sohncke*, 148 California, 262, 267.

Statutes have been held unconstitutional as violating the constitutional inhibitions against special laws, the classification being held arbitrary and without reasonable basis in *Slocum* v. *Bear Valley Co.*, 122 California, 555; *Johnson* v. *Goodyear Mining Co.*, 127 California, 417; *Krause* v. *Durbrow*, 127 California, 681, 685; *Beveridge* v.

Lewis, 137 California, 619, 623; *Ex parte Sohncke*, 148 California, 262; *Ex parte Westerfield*, 55 California, 550, 552, 553.

As to the discrimination between hotels and boarding houses and as to what constitutes an inn or hotel see *Pinkerton* v. *Woodward*, 33 California, 557; *Fay* v. *Pacific Improvement Co.*, 93 California, 253, 259; Schouler on Bailments, 253; *Cromwell* v. *Stephens* (N. Y.), 2 Daly, 15, 17, 23; *Kelly* v. *Excise Comr's*, 54 How. Prac. 327; *Martin* v. *State Ins. Co.*, 44 N. J. Law, 495; 22 Cyc. 1070; 16 Am. and Eng. Ency. of Law, 510; Beale on Innkeepers and Hotels, pp. 24–25, etc.; *Ex parte Jentzsch*, 112 California, 468, 474.

Mr. William Denman and *Mr. Louis D. Brandeis*, with whom *Mr. U. S. Webb*, Attorney General of the State of California, and *Mr. G. S. Arnold* were on the brief, for defendant in error:

California has the power to prevent the gainful employment of women for over eight hours a day in hotels and hospitals, and such a restriction is not an unconstitutional denial of freedom of contract.

The limitation of the number of hours women must work in these two employments has a direct relationship to women's health, and hence to the health of the race as a whole, as well as the safety and health of those she serves.

Women are admittedly weaker than men in the struggle of economic competition and may be protected by legislative enactment against the oppressive bargaining or control of their employer, whether arising from cupidity or such a mistaken philanthropy as that of the hospital here, which admittedly works its undergraduate girl nurses the equivalent of twelve hours a day for a six day week to make a better showing of the number of poor people cared for.

The limitation of the number of hours of woman's labor in gainful occupations to not over a half of her waking time

may check the rapid decline in reproduction of the older American stocks and in any event leaves her free for the development of mind and body for wifehood and motherhood, and hence insures the increased intelligence and strengthening of the race through the mother, to whom primarily (in California at least) the shaping of the child mind, the directing of his habits and the development of his character is primarily entrusted.

The California statutes in question do not deny equal protection of the law.

The continuous work of women in hotels and hospitals differs essentially from the intermittent seasonal work of women in harvesting, curing, canning or drying of any variety of perishable fruit or vegetables.

There is an essential difference between the work of women in hotels and in lodging houses.

The graduate nurse belongs to a class composed of women mentally better educated, physically better trained, professionally more experienced, and economically better organized to resist oppressive regulation imposed by their employers, and hence may be left free from legislative restriction in the performance of her distinctive functions in the hospital. She is the best fitted to cope with those emergencies arising in the operating room and ward, which often require attendance for more than the eight hour period and hence excepting her from the law provides for such emergencies.

In support of these contentions see *Adams* v. *Milwaukee*, 228 U. S. 572; *Barrett* v. *Indiana*, 229 U. S. 26; Bureau of Education Bulletin, 1912, No. 7.

Boarding houses are excluded from statutes regulating hotels in Delaware, Illinois, Michigan, Maryland, New Jersey, Oregon, Pennsylvania, Utah, Virginia, Washington. See *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Colting* v. *Kansas*, 183 U. S. 79; *Doyle* v. *Continental Ins. Co.*, 94 U. S. 535; *Hawley* v. *Walker*, 232 U. S. 718; *Holden* v.

Hardy, 169 U. S. 366; *Lindsley* v. *Nat. Gas Co.*, 220 U. S. 76; *McLean* v. *Arkansas*, 211 U. S. 539; *Ex parte Miller*, 162 California, 687; *Muller* v. *Oregon*, 208 U. S. 412; *Patsone* v. *Pennsylvania*, 232 U. S. 138; *People* v. *Elerding*, 254 Illinois, 579; *Quong Wing* v. *Kirkendall*, 223 U. S. 59; *Riley* v. *Massachusetts*, 232 U. S. 671; *Smith* v. *Texas*, 233 U. S. 630; *Wenham* v. *State*, 65 Nebraska, 395.

MR. JUSTICE HUGHES delivered the opinion of the court.

The plaintiff in error, the proprietor of the Glenwood Hotel in the City of Riverside, California, was arrested upon the charge of employing and requiring a woman to work in the hotel for the period of nine hours in a day, contrary to the statute of California which forbade such employment for more than eight hours a day or forty-eight hours a week. Act of March 22, 1911; Stats. 1911, p. 437. It was stated in the argument at this bar that the woman was employed as a chambermaid. Urging that the act was in violation of the state constitution, and also that it was repugnant to the Fourteenth Amendment as an arbitrary invasion of liberty of contract and as unreasonably discriminatory, the plaintiff in error obtained a writ of *habeas corpus* from the Supreme Court of the State. That court, characterizing the statute as one 'intended for a police regulation to preserve, protect, or promote the general health and welfare,' upheld its validity and remanded the plaintiff in error to custody. 162 California, 687. This writ of error was then sued out.

The material portion of the statute, as it then stood, was as follows:

"No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or

more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; *provided, however,* that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable."

As the liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest—the question is whether the restrictions of the statute have reasonable relation to a proper purpose. *Chicago, Burlington & Quincy R. R.* v. *McGuire,* 219 U. S. 549, 567; *Erie R. R.* v. *Williams,* 233 U. S. 685, 699; *Coppage* v. *Kansas, ante,* pp. 1, 18. Upon this point, the recent decisions of this Court upholding other statutes limiting the hours of labor of women must be regarded as decisive. In *Muller* v. *Oregon,* 208 U. S. 412, the statute of that State, providing that 'no female shall be employed in any mechanical establishment, or factory, or laundry' for 'more than ten hours during any one day,' was sustained as applied to the work of an adult woman in a laundry. The decision was based upon considerations relating to woman's physical structure, her maternal functions, and the vital importance of her protection in order to preserve the strength and vigor of the race. 'She is properly placed in a class by herself,' said the court, p. 422, 'and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. . . . Even though all restrictions on political, personal and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to

him for protection; that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence.' In *Riley* v. *Massachusetts*, 232 U. S. 671, the plaintiff in error had been convicted upon the charge of employing a woman in a factory at a different hour from that specified in a notice posted in accordance with the statute relating to the hours of labor. The general provision of the statute being found to be valid, the particular requirements which were the subject of special objection were also upheld as administrative rules designed to prevent the circumvention of the purpose of the law. The case of *Hawley* v. *Walker*, 232 U. S. 718, arose under the Ohio act prohibiting the employment of 'females over eighteen years of age' to work in 'any factory, workshop, telephone or telegraph office, millinery, or dressmaking establishment, restaurant or in the distributing or transmission of messages more than ten hours in any one day, or more than fifty-four hours in any one week.' The plaintiff in error was charged with employing a woman in a millinery establishment for fifty-five hours in a week. The constitutionality of the law as thus applied was sustained by this court.

It is manifestly impossible to say that the mere fact that the statute of California provides for an eight hour day, or a maximum of forty-eight hours a week, instead of ten hours a day or fifty-four hours a week, takes the case out of the domain of legislative discretion. This is not to imply that a limitation of the hours of labor of women might not be pushed to a wholly indefensible extreme, but there is no ground for the conclusion here that the limit of the reasonable exertion of protective authority has been overstepped. Nor, with respect to liberty of contract, are we able to perceive any reason upon which the State's power thus to limit hours may be upheld with respect to women in a millinery establishment and denied as to a chambermaid in a hotel.

We are thus brought to the objections to the act which are urged upon the ground of unreasonable discrimination. These are (1) the exception of women employed in 'harvesting, curing, canning or drying of any variety of perishable fruit or vegetable;' (2) the omission of those employed in boarding houses, lodging houses, etc.; (3) the omission of several classes of women employés, as for example stenographers, clerks and assistants employed by the professional classes, and domestic servants; and (4) that the classification is based on the nature of the employer's business and not upon the character of the employé's work.

With respect to the last of these objections, it is sufficient to say that the character of the work may largely depend upon the nature and incidents of the business in connection with which the work is done. The legislature is not debarred from classifying according to general considerations and with regard to prevailing conditions; otherwise, there could be no legislative power to classify. For it is always possible by analysis to discover inequalities as to some persons or things embraced within any specified class. A classification based simply on a general description of work would almost certainly bring within the class

a host of individual instances exhibiting very wide differences; it is impossible to deny to the legislature the authority to take account of these differences and to do this according to practical groupings in which, while certain individual distinctions may still exist, the group selected will as a whole fairly present a class in itself. Frequently such groupings may be made with respect to the general nature of the business in which the work is performed; and, where a distinction based on the nature of the business is not an unreasonable one considered in its general application, the classification is not to be condemned. See *Louisville & Nashville R. R.* v. *Melton*, 218 U. S. 36, 53, 54. Hotels, as a class, are distinct establishments not only in their relative size but in the fact that they maintain a special organization to supply a distinct and exacting service. They are adapted to the needs of strangers and travelers who are served indiscriminately. As the state court pointed out, the women employés in hotels are for the most part chambermaids and waitresses; and it cannot be said that the conditions of work are identical with those which obtain in establishments of a different character, or that it was beyond the legislative power to recognize the differences that exist.

If the conclusion be reached, as we think it must be, that the legislature could properly include hotels in its classification, the question whether the act must be deemed to be invalid because of its omission of women employed in certain other lines of business is substantially the same as that presented in *Hawley* v. *Walker*, *supra*. There, the statute excepted 'canneries or establishments engaged in preparing for use perishable goods'; and it was asked in that case on behalf of the owner of a millinery establishment why the act should omit mercantile establishments and hotels. The contention as to the various omissions which are noted in the objections here urged ignores the well-established principle that the legislature is not bound,

in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be guided by experience. *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously, step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all-embracing terms.' *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227. Upon this principle, which has had abundant illustration in the decisions cited below, it cannot be concluded that the failure to extend the act to other and distinct lines of business, having their own circumstances and conditions, or to domestic service, created an arbitrary discrimination as against the proprietors of hotels. *Ozan Lumber Co.* v. *Union County Bank*, 207 U. S. 251, 256; *Heath & Milligan* v. *Worst*, 207 U. S. 338, 354; *Engel* v. *O'Malley*, 219 U. S. 128, 138; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Mutual Loan Co.* v. *Martell*, 222 U. S. 225, 235; *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160; *Rosenthal* v. *New York*, 226 U. S. 260, 270; *Barrett* v. *Indiana*, 229 U. S. 26, 29; *Sturges & Burn* v. *Beauchamp*, 231 U. S. 320, 326; *German Alliance Insurance Co.* v. *Kansas*, 233 U. S. 389, 418; *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 213; *Atlantic Coast Line R. R.* v. *Georgia*, 234 U. S. 280, 289.

For these reasons the judgment must be affirmed.

Judgment affirmed.

BOSLEY *v.* McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA.

SAME *v.* SAME.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Nos. 362, 363. Argued January 12, 1915.—Decided February 23, 1915.

The nature of the work of pharmacists and student nurses in hospitals and the importance to the public that it should not be performed by those overfatigued, make it a proper subject for legislative control as to hours of labor of women so employed.

Whether there is necessity for limiting the hours of labor of women pharmacists and nurses in hospitals is a matter for legislative and not judicial control, and the legislature is not prevented by the due process clause of the Fourteenth Amendment from limiting such labor to eight hours a day or a maximum of forty-eight hours a week. Such a restriction is not so palpably arbitrary as to be an unconstitutional invasion of the liberty of contract.

Miller v. *Wilson, ante*, p. 373, followed in regard to the right of the legislature to limit the hours of labor of women other than pharmacists and student nurses employed in hospitals in California.

An exception of graduate nurses from the operation of a statute limiting the hours of labor of women is not so arbitrary, either as to female pharmacists or student nurses in hospitals, as to make the statute unconstitutional as denying equal protection of the law. The distinction in their employment is one of which the legislature may take notice.

Enforcement of a state police statute will not be enjoined on the ground that it violates the equal protection provision of the Fourteenth Amendment where the bill fails to show as to the persons attacking the statute any such injury, actual or threatened, as warrants resort to a court of equity.

The California Statute of 1911 as amended in 1913 limiting the hours of labor of women in certain employments including those in hospitals to eight hours in any one day or a maximum of forty-eight hours a week is not unconstitutional under the Fourteenth Amendment either as unduly abridging the liberty of contract, or as denying equal protection of the law because graduate nurses were excepted therefrom.

THE facts, which involve the constitutionality under the Fourteenth Amendment of the California Women's Eight Hour Labor Law, are stated in the opinion.

Mr. John F. Bowie, with whom *Mr. Charles S. Wheeler* was on the brief, for appellants:

The provision of the statute excepting graduate nurses from the operation of the law results in denying equal protection of the laws to all other women working in hospitals.

The fact that a law may be passed in exercise of the police power does not obviate the requirement of equal protection.

Equal protection of the laws requires that no impediment be interposed to the pursuits of one except as applied to the pursuits of others under like circumstances.

Appellants offered to prove as a fact that the statute imposed on women following the same pursuits as those followed by graduate nurses impediments not imposed on graduate nurses: that no difference existed justifying this discrimination.

The pursuits followed by graduate nurses in hospitals are the same as those followed by other women in hospitals and there is no difference in theory or past experience justifying the discrimination.

The statute will if enforced operate to deprive appellants of liberty without due process of law.

The act under consideration is not a health law.

Laws limiting hours of labor of adults operate to deprive those subject thereto of liberty.

Liberty includes freedom to work at a lawful calling.

Women are not wards of the State.

The statute operates to deprive appellants of liberty without due process of law.

The statute is invalid even if viewed as an exercise of

police power as the restrictions imposed are arbitrary and unnecessarily oppressive.

In support of these contentions see *Addyston Co.* v. *United States*, 175 U. S. 211; *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Attorney General* v. *Sillem*, 33 L. J. Ex. 92; *Chicago, B. & Q.* v. *McGuire*, 219 U. S. 549; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Cotting* v. *Kansas*, 183 U. S. 79; *Ex parte Drayton*, 153 Fed. Rep. 986; *Dyke* v. *Elliott*, L. R. 4 P. C. 184; *Erie R. R.* v. *Williams*, 233 U. S. 685; *Eubank* v. *Richmond*, 226 U. S. 137; *German Alliance Ins. Co.* v. *Kansas*, 233 U. S. 389; *Gulf, Col. & Santa Fe R. R.* v. *Ellis*, 165 U. S. 150; *Ex parte Jentzsch*, 112 California, 468; *Lawton* v. *Steele*, 152 U. S. 133; *Lochner* v. *New York*, 198 U. S. 45; *Low* v. *Rees Printing Co.*, 41 Nebraska, 127; *Minnesota* v. *Barber*, 136 U. S. 313; *Mugler* v. *Kansas*, 123 U. S. 623; *Muller* v. *Oregon*, 208 U. S. 412; *Opinion of Justices*, 208 Massachusetts, 622; *People* v. *Elerding*, 254 Illinois, 579; *People* v. *Williams*, 189 N. Y. 131; *Ritchie* v. *People*, 155 Illinois, 98; *In re Sing Tuck*, 126 Fed. Rep. 386; *Smith* v. *Alabama*, 124 U. S. 465; *Smith* v. *Texas*, 233 U. S. 630; *Soon Hing* v. *Crowley*, 113 U. S. 703; *State ex rel. Galle* v. *New Orleans*, 113 Louisiana, 371; *United States* v. *Ragsdale*, Hempst. 479; *United States* v. *Wiltberger*, 5 Wheaton, 76; Statutes of California, 1913, p. 713.

Mr. William Denman and *Mr. Louis D. Brandeis*, with whom *Mr. G. S. Arnold* were on the brief, for appellees:

Eight-hour laws for women are valid.

Statutes have been passed for women's eight-hour laws in private businesses.

There are eight-hour laws for men and women in certain private businesses,—in mines, smelters, ore reduction, and in miscellaneous private businesses.

There are eight-hour laws for men and women telegraphers and telephone operators in railroad service; for

men and women in work done in private business for national, state or municipal governments and public employments.

The classifications made in Cal. Stat. 1911, chaps. 238 and 324, are not arbitrary.

There are recognized evils of employing pupil nurses, while still in training, to perform the duties of graduate nurses.

There was common knowledge and widespread discussion of the exemption of Graduate Nurses before the California Act of 1913 was passed.

There was general condemnation of the practice of many hospitals in employing pupil nurses instead of graduate nurses for the sake of financial gain.

The common practice in the best hospitals is to sharply differentiate between graduate and pupil nurses as to capacities, functions and duties.

There is an acknowledged power of associated graduate nurses to improve standards in their profession.

The reasonableness of the eight-hour day for pupil nurses is apparent as is also the reasonableness of not exempting "experienced" nurses from the scope of the act and including pharmacists within the scope of the act.

The act does not apply to women internes acting as physicians and surgeons.

In support of these contentions see *Ex parte Hawley*, 98 N. E. Rep. 1126; *Hawley* v. *Walker*, 232 U. S. 718; *Muller* v. *Oregon*, 208 U. S. 412; *People* v. *Elerding*, 98 N. E. Rep. 982; *State* v. *Somerville*, 122 Pac. Rep. 324; *Withey* v. *Bloem*, 128 N. W. Rep. 913.

MR. JUSTICE HUGHES delivered the opinion of the court.

This is a suit to restrain the enforcement of the statute of California prohibiting the employment of women for more than eight hours in any one day or more than forty-

eight hours in any one week. The act is the same as that which was under consideration in *Miller* v. *Wilson*, *ante*, p. 373, decided this day, as amended in 1913. By the amendment, the statute was extended to public lodging houses, apartment houses, hospitals, and places of amusement. The proviso was also amended so as to make the statute inapplicable to 'graduate nurses in hospitals.' Stats. (Cal.) 1913, p. 713.

The complainants are the trustees of 'The Samuel Merritt Hospital' in Alameda, California, and one of their employés, Ethel E. Nelson. Their bill set forth that there were employed in this hospital approximately eighty women and eighteen men; that of these women ten were what are known as 'graduate nurses,' that is to say, those who had 'pursued and completed, at some training school for nurses in a hospital, courses of study and training in the profession or occupation of nursing and attending the sick and injured,' and had received diplomas or certificates of graduation. By reason of their qualifications, they were paid 'a compensation greatly in excess of that paid to female pupils engaged in nursing in hospitals while students of the training school.'

It was further averred that, in addition to these ten graduate nurses, certain other women were employed in the hospital, one as bookkeeper, two as office assistants, one as seamstress, one as matron or housekeeper, five who were engaged in ordinary household duties, and one—the complainant Ethel E. Nelson—as pharmacist. It was stated that this complainant was a graduate pharmacist, licensed by the state board; that she also acted as storekeeper, but that her chief duty was to mix and compound drugs for use in the treatment of the hospital patients. The general allegation was made that these last-mentioned eleven employés performed work that was in no manner different from that done by 'persons engaged in similar employments or occupations and not

employed in hospitals.' The apprehended injury to the complainant Nelson by reason of the interference of the statute with her freedom to contract was specially alleged.

It was also set forth that the hospital maintained a school with a three years' course of study wherein women were trained to nurse the sick and injured; that in this school there were enrolled twenty-four in the third year class, eighteen in the second year class, and twenty-three in the first year class; that a part of the 'education and training' of these 'student nurses' consisted in 'aiding, nursing, and attending to the wants of the sick and injured persons' in the hospital, this work being done while the student was pursuing the prescribed course of study; that the student nurses were paid $10 a month during each of the first two years of their course and $12.50 a month in the third year, and were also provided throughout the three years 'with free board, lodging and laundry.' It was averred that the cost to the hospital of maintaining the school was $2,500 a month, and that the cost of procuring the work to be performed by graduate nurses that was being done by student nurses would be not less than $3,600 a month. It was set forth as a reason why the work of the student nurses was done at less expense, that their compensation was paid not only in money, board, etc., but also partially in their education and training, their attendance on patients being in itself an indispensable part of their course of preparation. It was said further that their hours of labor must be determined by the exigencies of the cases they were attending.

The enforcement of the act with respect to these student nurses, it was stated, would require the hospital either to cease the operation of the school or largely to increase the number in attendance in order that an equal return in service could be obtained; and such increase would involve a greatly enlarged expense.

The complainants attacked the act on the grounds

that it interfered with their liberty of contract and denied to them the equal protection of the laws, contrary to the Fourteenth Amendment. And in support, it was asserted in substance, that labor in hospitals did not afford, in itself, a basis for classification; that there was no difference between such labor and the 'same kind of labor' performed elsewhere; that a hospital is not an unhealthful or unsanitary place; and, generally, that the statute and its distinctions were arbitrary.

Upon the bill, an application was made for an injunction pending the suit. It was heard by three judges and was denied. The appeal in No. 362 is from the order thereupon entered.

The defendants, the officers charged with the enforcement of the law, filed an answer. On final hearing, the complainants made an offer to prove that "all the allegations of fact set forth in the bill were true; that the fact that a woman was a graduate nurse merely showed that she had completed a course of study for the treatment of the sick, but that the course of study which a woman must take for that purpose was not prescribed by law or fixed by custom, but was such as any hospital or training school might, in the discretion of its governing officers see fit to prescribe; that the difference between a graduate nurse and an experienced nurse is a difference of technical education only, and that there is no standard by which this difference can be measured; that graduate nurses working in and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers to assistants to the medical staff." The District Judge thereupon stated that upon the hearing of the motion for an interlocutory injunction it had been held that the complaint did not state a cause of action and that it was considered unnecessary to take the evidence. The offer of proof was rejected and the bill of complaint dismissed. No. 363 is an appeal from the final decree.

1. *As to liberty of contract.* The gravamen of the bill is with respect to the complainant Nelson, a graduate pharmacist, and the student nurses. As to the former,—it appears that a statute of California limits the hours of labor of pharmacists to ten hours a day and sixty hours a week. Stats. (Cal.) 1905, p. 28. In view of the nature of their work, and the extreme importance to the public that it should not be performed by those who are suffering from over-fatigue, there can be no doubt as to the legislative power reasonably to limit the hours of labor in that occupation. This, the appellants expressly concede. But this being admitted to be obviously within the authority of the legislature, there is no ground for asserting that the right to contractual freedom precludes the legislature from prohibiting women pharmacists from working for more than eight hours a day in hospitals. The mere question whether in such case a practical exigency exists, that is, whether such a requirement is expedient, must be regarded as a matter for legislative, not judicial, consideration.

The appellants, in argument, suggest a doubt whether the statute is applicable to the student nurses, but the bill clearly raises the question of its validity as thus applied and urges the serious injury which its enforcement would entail upon the hospital. Assuming that these nurses are included, the case presented would seem to be decisive in favor of the law. For it appears that these persons, upon whom rests the burden of immediate attendance upon, and nursing of, the patients in the hospital are also pupils engaged in a course of study, and the propriety of legislative protection of women undergoing such a discipline is not open to question. Considerations which, it may be assumed, moved the legislature to action have been the subject of general discussion as is shown by the bulletin issued by the United States Bureau of Education on the 'Educational Status of Nursing' (Bulletin,

1912, No. 7). With respect to the 'hours of duty' for student nurses, it is there said (pp. 29-32): "These long hours have always formed a persistent and at times an apparently immovable obstacle in efforts to improve the education of nurses and to establish a rational adjustment of practice to theory. . . . Ten or more hours a day in addition to class work and study might be endured for a period of two years without obvious or immediate injury to health. The same hours carried on for three years would prove a serious strain upon the student's physical resources, inflicting perhaps irreparable injury. The conclusions reached in this first study of working hours of students (1896) were that they were universally excessive, that their requirement reacted injuriously not only upon the students, but eventually upon the patients and the hospital, that it was a short-sighted and unjustifiable economy in hospital administration which permitted it to exist. Fifteen years later, statistics show that though the course of training has now in the great majority of schools been lengthened to three years, shorter hours of work have not generally accompanied this change, and that progress in that direction has been slow and unsatisfactory." After quoting statistics the bulletin continues: "In speaking of hours it must be remembered that these statistics refer only to practical work in ward, clinic, operating room, or other hospital department, and not to any portion of theoretical work; that the 10 hours in question are required of the student irrespective of lectures, class, or study. This practical work, also, is in many of its aspects unusually exacting and fatiguing; much of it is done while standing, bending, or lifting; much of it is done under pressure of time and nervous tension, and to a considerable degree the physical effort which the student must make is accompanied by mental anxiety and definite, often grave, responsibility. Viewed from any standpoint whatever, real nursing is difficult,

exacting work, done under abnormal conditions, and all the extraordinary, subtile, intangible rewards and satisfactions which are bound up in it for the worker cannot alter that fact.—Ten hours, or even nine hours, of work daily of this nature cannot satisfactorily be combined with theoretical instruction to form a workable educational scheme.— . . . How largely the superintendents of training schools feel the need of improvement in this direction may be gathered from the fact that over two-thirds of the replies to the questions on this subject suggested shorter hours as advisable or necessary, that a large proportion of these stated their firm belief in an 8-hour day, and that almost every reply which came showed clearly in one way or another the difficulties under which the schools were laboring in trying to carry on the hospital work with the existing number of students."

Whatever contest there may be as to any of the points of view thus suggested, there is plainly no ground for saying that a restriction of the hours of labor of student nurses is palpably arbitrary.

As to certain other women (ten in number) employed in the hospital, such as the matron, seamstress, bookkeeper, two office assistants and five persons engaged in so-called household work, the bill contains merely this general description without further specifications; and from any point of view it is clear, that, with respect to the question of freedom of contract, no facts are alleged which are sufficient to take the case out of the rulings in *Muller* v. *Oregon*, 208 U. S. 412; *Riley* v. *Massachusetts*, 232 U. S. 671; *Hawley* v. *Walker*, 232 U. S. 718; and *Miller* v. *Wilson*, *ante*, p. 373.

2. *As to the equal protection of the laws.* The argument in this aspect of the case is especially addressed to the exception of 'graduate nurses.' The contention is that they are placed 'on one side of the line and doctors, surgeons, pharmacists, experienced nurses and student nurses

and all other hospital employés on the other side of the line.' So far as women doctors and surgeons are concerned, the question is merely an abstract one as no such question is presented by the allegations of the bill with regard to the complainant hospital. (*Southern Railway v. King*, 217 U. S. 524, 534; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550.) With regard to other nurses, whether so-called 'experienced' nurses or student nurses, it sufficiently appears that the graduate nurse is in a separate class. The allegations of the bill itself show this to be the fact. It is averred that the graduate nurses are those who 'have pursued and completed, at some training school for nurses in a hospital, courses of study and training in the profession or occupation of nursing and attending the sick and injured, and have received, in recognition thereof, diplomas or certificates of graduation from said courses of study.' And, in the appellants' offer of proof, it is said that 'graduate nurses working in and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers to assistants to the medical staff.' It may be, as asserted, that the difference in qualifications between a graduate nurse and an 'experienced nurse' is a difference of technical education only, but that difference exists and is not to be brushed aside. It is one of which the legislature could take cognizance. Not only so, but as such nurses act as overseers of wards or assistants to surgeons and physicians, it would be manifestly proper for the legislature to recognize an exigency with respect to their employment making it advisable to take them out of the general prohibition. Again, with regard to the complainant Nelson, who is a graduate pharmacist, while she has been graduated from a course of training for her chosen vocation, it is a different vocation. The work is not the same. There is no relation to the supervision of the wards, and, putting mere matters of expediency aside, there is no basis for concluding that

the legislature was without power to treat the difference as a ground for classification.

As to the ten other women employés, the validity of the distinction made in the case of graduate nurses is obvious. It should further be said, aside from the propriety of classification of women in hospitals with respect to the general conditions there obtaining (*Louisville & Nashville R. R.* v. *Melton*, 218 U. S. 36, 53, 54), that the bill wholly fails to show as to the employment of any of these persons any such injury—actual or threatened—as would warrant resort to a court of equity to enjoin the enforcement of the law.

And the objection based upon the failure of the legislature to extend the prohibition of the statute to persons employed in other establishments is not to be distinguished in principle from that which was considered in *Miller* v. *Wilson*, *supra*, and cases there cited.

Decrees affirmed.